

Washington State Court of Appeals

Division Two

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DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

Case no. 48830-2-II

James J. O'Hagan,

Appellant

Vs.

JDH Cranberries LLC et al

Respondents

Opening Brief of Appellant

James J. O'Hagan

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ASSIGNMENTS OF ERROR

1. Judge Stephen Brown acknowledged fraudulent transfers occurred involving the subject property related to state court actions, but determined he had no duty to address the fraudulent transfers. 2/29/16 hearing page 27 lines 1-4, 3/14/16 hearing page 64 lines 5 & 6.
2. Judge Stephen Brown acknowledged I am a victim of organized fraud schemes by officers of the courts, but determined it was not his duty to address the organized fraud schemes, of officers of the courts. 2/29/16 hearing page 43 lines 12-16, 3/14/16 hearing page 62 lines 23- page 64 line 6.
3. After Judge Stephen Brown acknowledged I was a victim of fraud schemes by officers of the courts he threatened to take away my property, my cranberry farm, if I continued to attempt to document address the fraud schemes of his colleagues. 3/14/16 hearing pages 74 lines 19- page 75 line 6.
4. Judge Stephen Brown openly and blatantly with full knowledge of what he was doing used the peoples courts to execute criminal fraud and theft schemes of his colleagues in the Washington State Bar Association. 3/14/16 hearing page 62 lines 23- page 64 line 6 and 3/14/2016 hearing page 75 lines 4, 5, & 6
5. Judge Stephen Brown ignored the law, case law and evidence I presented in exhibit 3 (LIQIA) dkt # 40. 2/29/16 hearing Page 9- 46.
6. I motioned the court to move this case away from Division II Court of Appeals which was denied because the management and Judges involved in Division II Court of Appeals are directly involved in extorting taxpayer's money from them, to prevent these types of fraud crimes

from being presented to a jury and ended. The message Division II Court of Appeals is sending to the judges in their district is "it's ok for Judges to assist in attorney's fraud and theft schemes".

7. In accordance with the policy and procedures manual for Pacific County Court Administrators the Pacific County court Administrator failed to follow proper procedures when assigning this case to a fair and impartial judge, who did not have a conflict of interest. Dkt # 45

8. Without motion or consent from me the Pacific County Court Administrator changed venue of Pacific County cause no 15- 2-00250-5 which is illegal to do but was done to move the fraud and theft crimes away from sheriff investigators.

9. Judge Stephen Brown refused to acknowledge Pacific County Court Administrators had a duty to follow the procedures in their policy and procedures manual and stated on the record that I used up my affidavit of prejudice on Judge Michael Sullivan and I could not use the "one I was allowed" on him. 2/29/2016 hearing pages 2-4, pages 15-22.

10. Judge Stephen Brown ignored his obligation to the law and Judicial Cannons and assumed precedence over cause no. 15-00250-5 Dkt # 44 & 45

11. After presuming precedence over me, an individual who showed him he was in error on several criminal cases he was involved in, Judge Stephen Brown assumed precedence over Pacific County cause no 15-2-00250-5, so he could execute his maliciousness and vindictiveness against me for pointing out (his) Judge Stephen Brown's wrongdoings in open court.

12. After being appointed to Grays Harbor Superior Court by Governor Jay Inslee, Judge Steven Brown use his position to attack me and cover –up the fraud crimes Jay Inslee’s law partner Gregory Ursich designed and executed against me, in doings so Judge Stephen Brown used his official position to violate WSC Article I section 12 and lead the organized crimes of his fellow Washington State Bar Association (hereafter WSBA) members as described in RCW 9A. 82.060 Leading Organized Crime.

13. Judge Stephen Brown ignored the criminal fraud investigation of the Washington State Patrol and the charging document they submitted to the Attorney General’s office and used his official position to engage in criminal acts of omission and misprision of felony and conceal the criminal frauds of his fellow WSBA members and engaged in criminal actions to harass, threaten and intimidate a victim, witness and informant. 3/14/16 hearing page 58 line 23- page 64 line 6 Judge Brown’s quotes after acknowledging the organized fraud schemes by officers of the courts occurred “The problem isn’t going to be adjudicated in the way you think”, “So we are not going to adjudicate that, there is no way, that’s not what the courts do”.

14. After seeing and hearing my evidence Judge Stephen Brown acknowledged the property that is the subject of this action was involved in fraudulent transfers, or a fraudulent conveyance knew it was fraud upon the courts by officers of the courts, then engaged in actions to use his official position to cover –up the fraudulent transfers, criminal fraud and thefts involved. 2/29/16 hearing page 27 Lines 1 -4. Judge Stephen Brown then openly showed he had and has a willful disregard and willful

disrespect for the truth and engaged in attempts to conceal the truths and prevented me from taking the witness stand, calling forth witnesses, making evidence and getting my evidence into the court record to reach a just and equitable solution. I Quote Judge Brown " So, we are not going to adjudicate that, there is no way, that's not what courts do".

15. In an attempt to convert our Open Court of Record into his own personal star chamber and execute the fraud upon the courts, Judge Stephen Brown closed his courtroom to video cameras and stated clearly that all evidence and documents I submitted to the court record in this case was to be purged from the court record. This was an attempt to illegally tamper with court records. 3/14/2016 hearing page 73 lines 20 & 21 and page 75 lines 21-24.

16. Judge Stephen Brown ignored my jury trial demand and my counterclaim and made irrational determinations inconstant with the evidence, assisted in leading fraud crimes against me and unconstitutionally and unlawfully took away my jury trial demand and counter claim, then threatened to take my personal property away from me and my family if I continued to argue that I have been a victim of fraud schemes by individuals like him. 3/14/2016 hearing page 74 lines 19- through line 6 page 75.

17. Judge Stephen Brown, harassed, threatened and intimidated a victim witness and informant of judicial branch corruption in order to preserve the judicial branch corruption for him and his attorney colleagues. 3/14/2016 hearing page 74 lines 19- through line 6 page 75.

STATEMENT OF CASE

I. There are no statute of limitations, collateral estoppel, laches or res judicata when fraud upon the courts by officers of the courts occurs, it becomes a battle of will between the victim and the fraudsters and thieves, with the victim having his resources continually stolen and the fraudsters embezzling endless resources from innocent unsuspecting taxpayers. The jury was designed to prevent this type of fraud, fraud upon the courts by officers of the courts. Fraud upon the courts by officers of the courts can only survive outside of the presence of the jury. In order to execute their fraud and thefts it is a necessity of the fraudsters to prevent a jury from evaluating the evidence and determining the factual arguments. In an attempt to prevail with their fraud and theft schemes the fraudsters have argued I am a vexatious litigant, and I have argued I am a victim of fraud upon the courts by the officers of the courts, who have argued I am a vexatious litigant, which is a substantial factual argument for a jury to determine, and not a proper argument for officers of the courts who are using the courts to execute fraud and theft crimes to determine.

II. The property that is the subject of this case, was involved in fraud schemes designed by Washington State Bar Association (WSBA) member Gregory Ursich who is a law partner in the Law firm of Inslee Dozier and Best. The fraud schemes designed by the Governor's law partner (Gregory Ursich) were designed to defraud me of my judgment in Pacific County cause no. 94-2-00298-0 (dkt 40 exhibit LIQIA, 2/29/16 hearing pages 23-27. Governor Jay Inslee, (a member of the WSBA) recently appointed Judge Stephen Brown to Grays Harbor Superior Court, so he could take care of his law partner's criminal problems for him. Many

WSBA members assisted in executing the fraud schemes designed by the Governor's law partner, 2/29/16 hearing page 27 lines 1-25. On many occasions Special Privileges and Immunities (WSC Article I section 12) and Bribery and Corrupt Solicitation (WSC article II section 30) occurred and were illegally provided to all WSBA members who assisted in the fraud schemes or had knowledge of them as Judge Stephen Brown and attorney Zachary Edwards did, and acted in omission. Each and every WSBA member who assisted in the fraud upon the courts by officers of the courts fraud schemes, even by the act of omission, are as guilty of the fraud crimes as the individuals who designed them, and the individuals who executed them. The frauds and fraudulent transfers of the property involved were thoroughly investigated by the Washington State Patrol and they submitted a charging document to the Washington State Attorney General's office. Washington State Attorney General Robert Ferguson a WSBA member, refused to file criminal charges on a law partner of the Governor's law firm, thus providing everyone involved in executing the fraud schemes Special Privileges and Immunities as prohibited in WSC article I section 12. The criminal investigators determined the fraud crimes would be continuing and ongoing until they were adjudicated. Zachary Edwards and Judge Stephen Brown engaged in actions to use the people's courts to prevent them from being adjudicated.

III. In reality and lawfully everyone involved in the fraud schemes should be removed from office and prevented from ever holding public office again, but since we have a situation where the judiciary controls the entire Washington State Government, the members of the judiciary

can do as they please, and it is nearly impossible for anyone to hold any of them responsible for their crimes against our society. As described in 18 USC sections 1512 and 1513 I have been continually threatened, harassed and intimidated in continual attempts to shut me up by WSBA members who are highly motivated to conceal the corruption involved in all of it. Judge Stephen Brown and attorney Zachary Edwards are no exception and all of their actions are a criminal use of our courts to harass, threaten and intimidate a victim, witness and informant in order to execute organized crimes and organized criminal behavior.

IV. The Laws, Case Law, procedures, evidence and testimony I rely on is carefully documented in exhibit 3 (LIQIA), 2/29/16 hearing page 9 line24- page 46 line 22, exhibit 1 and exhibit 2 of dkt 40, of which I asked to be admitted into evidence and my request was refused by Judge Stephen Brown and when I offered it as an offer of proof he, Judge Stephen Brown order that it be removed from the court records. 3/14/2016 hearing page 73 lines 20 &21. Judge Stephen Brown's actions were to circumvent our common law courts of record and turn his court into his personal star chamber. The entire process was a direct subversive attack on our State and Federal Constitutions.

V. The fraudster attorneys have argued I am a vexatious litigant and I have argued I am a victim of fraud upon the courts by officers of the courts, which has always been a factual argument for a jury to determine. In order to execute the fraud upon the courts by the officers of the courts all judges involved including Judge Stephen Brown had to keep my evidence and testimony and this substantial factual argument away from a jury. 2/29/16 hearing page 53 lines 1-6. Judge Brown acknowledges the

fact Judge Golez granted me a jury trial to determine the facts then it was taken from me and no jury has been allowed to determine the facts 2/29/16 hearing pages 15-24 lines 24- 16.

VI. I ran for Washington State Representative and campaigned to clean up the corruption in the judicial branch. Instead of preventing or prosecuting these fraud and theft crimes prosecutors became accomplices in executing these fraud and theft crimes. Then the prosecutors engaged in malicious prosecution and attacked my character and creditability on the eve of the election, and charged me with theft crimes in an attempt to conceal their own involvement in using the people's courts to execute attorney crimes. Related to those criminal charges I have named each and everyone involved in this action, as witnesses I intend to call in my defense, in hopes to show the jury in that case, who initiated Brian Couch to attempt to use the courts to defraud me and steal from me, and expose the real criminals. Despite all of the efforts to keep me from testifying to a jury, I may now be able to reach a jury because of the aggressive, vindictive, malicious actions of the individual's responsible for preventing fraudster's and thieves actions.

ARGUMENT

1. No court administrator ever followed any proper procedures in assigning judges who did not have a conflict of interest to any of my cases that stemmed from Pacific County cause no 94-2-00298-0. All of the judges assigned to cases that stemmed from Pacific County cause no. 94-2-00298-0 were assigned out of malice and vindictiveness. Aberdeen attorney Curt Jhanunen worked with the Pacific County Court

administrator to have David Foscue preside over the Pacific County Superior Court cause no 01- 2-00332-3 because he was fully aware Judge Foscue had an ax to grind with me and he would fraudulently remove my judgment from the property that is the subject of this action. All of it was criminal and illegally done and all criminal Bankruptcy court actions stemmed from David Foscue's criminal actions. 2/29/16 hearing page 9- page 27 From the moment Pacific County case no. 15- 00250-5 was filed, Pacific County Court Administrators began scheming with other judicial officers as to how they are going to cover up the criminal frauds involved in all of the court actions involving the Judgment I have against the former Kenyon Kelley property (that is the subject of this lawsuit) and how Judges and attorneys managed to steal it from my family and cover up how attorneys managed to extort money from taxpayers to profit from their theft crimes. All of it is organized crimes by public officials including officers of the courts and regardless of what actions you attempt to take to cover-up their organized crimes, I will not accept any of it, and it is my goal to see that all of them are permanently removed from office, incarcerated for their subversive activities and all of their bonds, benefits special privileges and immunities are removed from them. I understand it is your goal to convert their crimes and criminal actions to administrative errors, which is not why they are described as crimes in our criminal codes. Whatever a jury determines I will honor, but I will not honor judges tag teaming me to steal my life, liberty and property.

2. In many cases that stemmed from Pacific County cause no 94-2-00298-0 proper venue and jurisdiction was ignored, out of malice and

vindictiveness. It was done to move the fraud crimes away from the county sheriff who is and was aware his deputies are being used as human shields by officers of the courts to execute their fraud crimes. Pacific County court administrators ignored their policy and procedures manual and appointed Judges they knew were bias and prejudice and would do everything they could to railroad me and keep me from reaching a jury to cover-up the organized fraud crimes I have been subject to by WSBA members. The Pacific County court administrator was fully aware that Judge Stephen Brown would covert our constitutional court of record into his personal closed star chamber in my case and penalize me for attempting to expose the organized crimes of his fellow judges and Washington State Bar Association members. All of Judge Stephen Brown's actions were with malice and vindictiveness and he personally attempted to close our court of record so he could lead the organized crimes for which he should not only be removed from office but incarcerated for, as the seriousness of the crimes he committed are more serious than any of the criminals he has incarcerated while presiding over district court. It is his obsession to power, his arrogance and his ego that leads him to believe he can lead these types of crimes.

3. In many cases court administrators ignored their policy and procedures manual and assigned cases that stemmed from Pacific County cause no. 94-2-00298-0 to judges that I had already filed affidavit's of prejudice on, including Pacific County cause no. 15-2-00250-5 which was in violation of their policy and procedures manuals. Dkts 17, 34, 44 & 45.

4. Judge Stephen Brown ignored his judicial obligations to all of the Washington State Court Rules including his obligations described in the

Code of Judicial Conduct, Rules of Professional Conduct and Washington Rules of Evidence. Dkts 8,9,10, 14, 15, 17, 19, 20, 21, 34, 35, 36, 38, 40, 41, 44, 45 & 50, 2/29/2016 hearing pages 2-5.

5. In a failed attempt to prosecute my son on a criminal charge of reckless driving in district court I pointed out to Judge Stephen Brown that he did not have jurisdiction over the area my son was driving, and Judge Stephen Brown stated in open court that he had heard about me, insinuated that I was a trouble maker and that he had been prosecuting individuals in the area my son was driving in for years and he would continue to prosecute individuals driving there. Shortly after this statement by Judge Stephen Brown my son's public defender reluctantly pointed out to Judge Stephen Brown that the area where my son was driving was not in Grays Harbor County and as such he had no jurisdiction over any of it. This essentially amounted to a situation where all of Judge Brown's prosecutions, as he called it should've been overturned, but all of them were ignored by the act of omission. Judge Stephen Brown glared at me in his courtroom for exposing his shortcomings, and I was fully aware that the moment he had a chance to use his official office as a judge to exercise his vengeance against me, he was going to.

6. Pacific County cause no. 15-2-00250-5 stemmed from Pacific County cause no. 94-2-00298-0, 01-200332-3 and all of the organized crimes of attorneys who conspired together in state and federal courts to defraud me of my judgment in Pacific County cause no 94-2-00298-0. Please see exhibit LIQIA of dkt # 40. This case is the result of a magnitude of organized fraud crimes that involve many WSBA members who used our courts to entertain, condone, assist and execute organized fraud

crimes by officers of the courts. The conspiracy to defraud me by WSBA members was independently investigated by Washington State Patrol white collar crime investigators and a charging document was submitted to the Washington State Attorney General who refuses to prosecute his fellow WSBA members. Exhibit LIQIA dkt #40 identifies the names of the WSBA members who designed and executed the fraud crimes and evidences the fraud crimes by them. The Washington State Patrol investigators concluded the fraud crimes are continuing until they are adjudicated.

7. This very serious problem with WSBA members acting criminally within our state government comes from WSBA members (or officers of the courts) violating the separation of powers and infiltrating our legislative and executive branches of government to obtain Special Privileges and Immunities. These WSBA members violated the separations of powers to engage in , bribery and corrupt solicitation so they could create laws, rules, policies and procedures that allowed them to steal economically vulnerable individuals life, liberties and properties under color of law. Please see Article III Distribution of Power of 1878 Washington State Constitution Documented in 50th Congress, 2nd Session, Senate, miscellaneous Documents, Number 55 January, 28 1889 that states plainly: Section 1. "The government of the State shall be divided into three separate and distinct departments, to wit, the legislative, the executive and the judicial". Sec. 2. "No person or collection of persons, holding any position in, or exercising any authority under, one of these departments shall hold any office in, or exercise any authority whatever under, either of the others, except as may be expressly provided for in

this constitution. Clearly this document supported the Enabling Act approved by congress on February 2, 1889 that led Washington to statehood. Cornell law comments on the separation of powers as follows.

Among the best historical treatments are M. Vile, *Constitutionalism and the Separation of Powers* (1967), and W. Gwyn, *The Meaning of the Separation of Powers* (1965).

2 Thus the Constitution of Virginia of 1776 provided: “The legislative, executive, and judiciary department shall be separate and distinct, so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them, at the same time[.]” Reprinted in 10 W. Swindler (ed.), *Sources and Documents of United States Constitutions* (1979), 52. See also 5 id., 96, Art. XXX of Part First, Massachusetts Constitution of 1780: “In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men.”

3 “In republican government the legislative authority, necessarily, predominates.” The Federalist No. 51 (J. Cooke ed. 1961), 350 (Madison). See also id., No. 48, 332–334. This theme continues today to influence the Court’s evaluation of congressional initiatives. E.g., *Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise*, 501 S.Ct. 252, 273–2274, 277 (1991). But compare id., 286 n. 3 (Justice White dissenting).

4 The intellectual history through the state period and the Convention proceedings is detailed in G. Wood, *The Creation of the American Republic, 1776–1787* (1969) (see index entries under “separation of powers”).

5 The Federalist Nos. 47–51 (J. Cooke ed. 1961), 323–353 (Madison).

6 Id., No. 47, 325–326(emphasis in original).

7 Id., Nos. 47–49, 325–343.

8 Id., No. 51, 349.

By violating the separation of powers WSBA members converted the Washington State Bar license into their personal license to steal, economically individuals life, liberty and property. The violations of the

separations of powers by attorneys attacked our constitutions, our oaths of office, and all we stand for including our Pledge of Allegiance, as there is no justice when attorneys can organize with judges to use the people's courts to execute their fraud and theft schemes then punish every individual economically who attempts to stop them. It is tyranny and anarchy.

Even though the May 14, 1889 Washington State Constitution avoids directly addressing violations to the separations of powers (Justice Madison disagrees as he states it is implied in all Republican forms of government) Article II section 30 Bribery and Corrupt solicitation strictly prohibits all attorneys from creating laws attorneys can capitalize on, including creating laws, procedures and rules that provides them Special Privileges and Immunities.

8. On request by Pacific County Sherriff Scott Johnson the Washington State Patrol conducted the criminal investigation into the fraud crimes Washington State Bar Association members subjected my family and I to, and submitted a criminal charging document to the Washington State Attorney General's office who refused to press criminal charges on his fellow colleagues in the judiciary. His actions are described as **misprision of felony in 18 USC section 3**, I argue he has become an **accessory after the fact as described in 18 USC section 4 in leading the organized fraud crimes as identified in RCW 9A.82.060 Leading Organized crime** for which he has violated his office. Currently the U. S. Justice Department is conducting a criminal investigation into the organized crimes of Washington State Bar Association members that I

have been subjected to. Please see exhibit 1. Exhibit one was read into the court record, asked to be submitted into evidence and offered as an offer of proof. After making requests to make evidence and offers of proof, Judge Stephen Brown ordered all documents I submitted to the court record in Pacific County cause no 15- 000250-5 removed from the court record, which was an attempt to tamper with court records and execute his colleagues fraud and theft schemes.

9. Article II section 28 parts 6, 9, 10, 12, and 17 of the May 14, 1889 Washington State Constitution prevents Judge Stephen Brown and the attorneys involved in designing their schemes to defraud me and my family which states respectfully:

Article II sections 28 Special Legislation. The legislature is prohibited from enacting any private or special laws in the following cases: 6. For granting corporate powers or privileges.

9. From giving effect to invalid deeds, wills or other instruments.

10 Releasing or extinguishing in whole or in part, the indebtedness, liability or other obligation, of any person, or corporation, to this state, or to the municipal corporation therein.

12. Legalizing, except as against the state, the unauthorized or invalid act of any officer.

17. For limitations of civil and criminal actions.

Judge Stephen Brown's order gave effect to the fraudulent transfers involved in the former Kenyon Kelley property that is the subject of this lawsuit, granted special privileges and immunities to all WSBA members who designed and executed the fraud schemes involved, released their debt and obligations and severely limited my civil and criminal actions involving the judgment I obtained in Pacific County cause no. 94-2-00298-0, all of which was unconstitutional illegal and criminal.

10. Washington State Division II Court of Appeals Judges are directly involved in and responsible for using their official position and office to lead and execute the attorneys organized fraud crimes. These crimes against my family and our society occurred and were possible only because the protections of the jury that were established to protect me from egotistic arrogant government officials were withheld from me. The intent of having the Jury is to protect all litigants (including but not limited to me) from the type of criminal acts I was subjected to by judges and government officials. It was established in our constitutions for no other reason. In accordance with but not limited to I demand the protections provided to me in USC Amendment VII Trial by Jury in Civil Case, USC Amendment XI Restriction of Judicial Powers, USC Amendment XIV section 1 Citizenship Not To Be Abridged by States, WSC Article 1 section 1 Political Power, WSC Article I section 2 Supreme law of the Land, WSC Article 1 section 3 Personal Rights, WSC article 1 section 21 trial by Jury no matter which constitution one uses, the protection of the jury trial from government officials is well established justified and documented. It is one thing for a Superior Court Judge to make an error in judgment, but it becomes a far more serious when a Superior Court

Judge becomes directly involved in using his office to lead organized crimes and execute criminal behavior. In exhibit 3 (LIQIA) Dkt. # 40 2/29/19 hearing page 46, I cited all of the state law federal law case law and constitutional law that pertain, was violated and I rely on.

12 In an attempt to execute his fellow Washington State Bar members judicial fraud crimes Judge Stephen Brown prevented me from testifying on the record and calling forth any witnesses and he prevented me from moving any of my evidence into the court record and after I made exhibit 3(LIQIA) of dkt # 40, 2/29/16 hearing page 9-46, an offer of proof of the fraud crimes I was subjected to he attempted to remove all documents I submitted to the Pacific County Court Clerk from the court record in this case. This action by Judge Stephen Brown was not only another attempt to subject me to tampering with court records but another attempt to close our constitutional court of record and make the Pacific County Superior Court his personal Star Chamber in which he became God and created all of the ex-post defacto law he needed to execute the organized fraud crimes of his fellow Washington State Bar Association members.

13. The entire actions of the judicial officers of Pacific County Superior Court were bias and prejudicial from the onset of this case. The maliciousness and vindictiveness started from the moment Division II Court of Appeals Judges denied the Honorable Douglas Goletz's order to allow me to have a jury trial to un-cloud the fraud and fraudulent transfers involved in clouding the title to the Former Kenyon Kelley property in Grayland Washington. The Division II Court of Appeals

decision was neither constitutionally acceptable nor lawful, and it was all about using our courts for criminal fraud crimes committed of attorneys and judges, it attacks the very foundation our constitutions were established to prevent. It is and was fraud upon our courts buy officers of the court of which there are no statute of limitations, res-judicata, collateral estoppel or latches that prevents a jury from determining the substantial facts.

14. In order for Judge Stephen Brown to conceal and cover-up the fraud crimes involved he had to convert the court from an open court of record into his own personal star chamber and remove the evidence and testimony from the court record. After pointing out to the Pacific County Court Clerk that it was illegally for Judge Stephen Brown to tamper with court records the Pacific County court clerk called the Grays harbor Court Clerk's office and pointed out to her that she had an electronic copy of the court record and nobody should attempt to tamper with her court records, and that the Grays Harbor court clerk should send all of the court records in this case back to her as soon as possible.

CONCLUSION

All of Judge Stephen Brown's actions show a pattern of falsities with a willful disregard and willful disrespect for the truth. All of Judge Stephen Brown's actions are criminal in nature and it is a gross disservice to our entire society to allow him to preside over any criminal trial, when he is using his official position as a judge to lead serious organized fraud and theft crimes. If any of it is accepted, condoned or allowed we have become a mirror image of Hitler's Nazi Gestapo Germany. Once

Government Officials start engaging in Criminal activities and other Government officials condone their crimes it is very difficult to cease and desist their criminal activity and their crimes continually get worse and worse because of the cover-up effect, until government officials have to use serious force and murder untold amounts of innocent individuals to attempt to keep from being held responsible for their crimes against society. Is that your desire to continue to be more criminal and more criminal to the point you have to use force to conceal your criminal activity. I cannot express how important it is for all of you to simply cease and desist your desire to assist in fraud and theft crimes and place all of this in the hands of a jury with an independent, fair and impartial judge presiding over it.

Everyone involved knows the moment a jury determines the facts and I prevail in state court the bankruptcy court will have to accept the jury's findings of fact and act equitably and just.

If any of the Division II Court of Appeals Judges pretend that I have not been subjected to organized fraud crimes by Washington State Bar members and they have an actual interest in justice instead of executing fraud crimes and corruption for their fellow Washington State Bar Association members they can obtain a copy of the entire Washington State Patrol's Criminal investigation, before they proceed.

Any creative writing skills, deceit or deceptions that are an attempt to justify the criminal theft and fraud actions is only an attempt to further execute the fraud and theft crimes, whereas at no time was I ever provided due process in the cases that led up to the decision by

Division II Court of Appeals Judges, whereas the only actions I attended by the court was status conferences where I met with a judge and an opposing attorney who at all times was acting unethically and immorally and together they decided my fate, at no time was I allowed to take the witness stand and testify in my defense nor was I ever allowed to call witness in my defense, and it is by this interference with due process that the courts have continually abused due process in my cases(s) in order to achieve a common goal of Washington State Bar members to make sure no pro se litigant ever prevails in "their courts" There only desire is to maintain a status quo that they have the absolute right and power to determine who is entitled to achieve just and equitable determinations and who is not. By violating the separations of powers the entire judicial branch has not only obstructed all economically vulnerable individuals ability to obtain any form of justice, but they have devised schemes to arrange for their fellow WSBA members to steal every economically vulnerable individuals life, liberty and property under color of law by using fraud schemes.

I am not allowing any judge or panel of judges to determine the substantial factual argument that either I am a vexatious litigant or a victim of fraud upon the courts by offices of the courts, I have reserved and I am continuing to reserve that substantial factual argument for a jury to determine, and I am arguing that officers of the courts conspired together to keep that factual argument from a jury and steal my rights in the property that is the subject of this action from me.

I am continuing to argue that every officer of the court who prevents a jury from determining the substantial argument as described in RCW 7.16.120 that either I am a vexatious litigant or a victim of fraud upon the courts by officers of the courts is an accomplice to the fraudsters and thieves.

In accordance with RCW 7.16.210 I am mandating this court send the substantial argument that either I am a vexatious litigant or a victim of fraud upon the courts by officers of the courts to a jury to determine so the proceedings can be just and equitable.

In accordance with RCW 7.16.140 Grounds for Granting Writ, and in the interest of justice the requests made in this writ of review should be granted.

In accordance with RCW 7.16.120 Questions involving merits to be determined.

- (1) A question of jurisdiction and venue has been raised.
- (2) Clearly neither the Pacific County Court Administrators nor Judge Stephen Brown pursued the subject matter in the mode prescribed by law.
- (3) Clearly the rule of law has been violated as to me the defendant in the case.
- (4) The proof offered directly collides with the determination.
- (5) The evidence contradicts the factual determinations of Judge Stephen Brown.

Since the criminal investigation of the Washington State Patrol and the evidence contradicts Judge Stephen Brown's determination, the lawful proper procedure for the appellate court to take is order the question of whether or not the property that is the subject of this act was involved in fraudulent transfers to be determined by a jury as identified in RCW 7.16.210, and then proceed appropriately with the correct factual findings.

FILE
COURT OF APPEALS
DIVISION
2016 DEC 14 PM
STATE OF WASH.
BY _____
DEPUTY

ORAL ARGUMENT DEMAND

In addition to Demanding Oral Argument I Demand an opportunity to have a real trial and call at least one witness in my defense and the first witness I am going to call is the Washington State Patrol investigator who investigated the organized fraud crimes I have been subjected to by Washington State Bar Association members.

Dated this 14 day of December, 2016. By _____

James J. O'Hagan, pro se All Rights and Protections Reserved

Certificate of Mailing

I James J. O'Hagan swear under the penalty of perjury that I mailed, postage prepaid a true and correct copy of this document to Zachary Edwards P.O. Box 2016 Aberdeen WA 98520 on the day identified below.

Dated this 14 day of December 2016, _____

James J. O'Hagan

Exhibit 1



STATE OF WASHINGTON
WASHINGTON STATE PATROL

4811 Werner Road • Bremerton, Washington 98312-3333 • (360) 478-4646

October 24, 2013

Mr. James J. O'Hagan
2298 Cranberry Road
Grayland WA 98547

The Washington State Patrol (WSP) Criminal Investigation Division has completed the investigation of your case. The case number associated with this investigation is 08-13-006659. The case officer is Scott Marlow of the Attorney General's Office. The attorney may be reached at (206) 389-2098 during normal business hours. If the attorney is not available when you call, please leave a message and the attorney will call you back as soon as possible.

You are receiving this letter because you are either a victim in this case or because you have been identified to us as a point of contact for the affected person(s).

The investigation has been completed and referred to the Attorney General's Office for a charging decision. The Attorney General makes the decision regarding whether or not to charge a suspect with a crime and what those charge(s) should be. Although the active investigation is complete, the case is not closed until it is adjudicated. The attorney assigned to this case will continue to work closely with the Attorney General's Office until the case is adjudicated by the court.

Now that the case has been referred to the Attorney General's Office, further inquiries regarding this case should be directed to the attorney's office for updates and case status inquiries.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles A. Leblanc".

Captain Charles Leblanc
Criminal Investigation Division

CL:rg

cc: Captain Christopher D Old, Bremerton

APPENDIX

A

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 16 EMINENT DOMAIN. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: *Provided*, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. [AMENDMENT 9, 1919 p 385 Section 1. Approved November, 1920.]

SECTION 17 IMPRISONMENT FOR DEBT. There shall be no imprisonment for debt, except in cases of absconding debtors.

SECTION 21 TRIAL BY JURY. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

SECTION 23 BILL OF ATTAINDER, EX POST FACTO LAW, ETC. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

SECTION 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

SECTION 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

SECTION 33 RECALL OF ELECTIVE OFFICERS. Every elective public officer of the state of Washington except [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. [AMENDMENT 8, 1911 p 504 Section 1. Approved November, 1912.]

SECTION 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: *Provided*, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. [AMENDMENT 8, 1911 p 504 Section 1. Approved November, 1912.]

SECTION 35 VICTIMS OF CRIMES -- RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

[AMENDMENT 84, 1989 Senate Joint Resolution No. 8200, p 2999. Approved November 7, 1989.]

ARTICLE II SECTION 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.

(a) Initiative: The first power reserved by the people is the initiative. Every such petition shall include the full text of the measure so proposed. In the case of initiatives to the legislature and initiatives to the people, the number of valid signatures of legal voters required shall be equal to eight percent of the votes cast for the office of governor at the last gubernatorial election preceding the initial filing of the text of the initiative measure with the secretary of state. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall certify the results within forty days of the filing. If certification is not complete by the date that the legislature convenes, he shall provisionally certify the measure pending final certification of the measure. Such initiative measures, whether certified or provisionally certified, shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

(b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted: *Provided*, That the legislature may not order a referendum on any initiative measure enacted by the legislature under the foregoing subsection (a). The number of valid signatures of registered voters required on a petition for referendum of an act of the legislature or any part thereof, shall

be equal to or exceeding four percent of the votes cast for the office of governor at the last gubernatorial election preceding the filing of the text of the referendum measure with the secretary of state.

(c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided*, That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.

(d) The filing of a referendum petition against one or more items, sections, or parts of any act, law, or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the next succeeding regular general election following the filing of the measure with the secretary of state, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon:

Provided, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation.

(e) The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred. The secretary of state shall send one copy of the publication to each individual place of residence in the state and shall make such additional distribution as he shall determine necessary to reasonably assure that each voter will have an opportunity to study the measures prior to election. [AMENDMENT 72, 1981 Substitute Senate Joint Resolution No. 133, p 1796. Approved November 3, 1981.]

ARTICLE II SECTION 30 BRIBERY OR CORRUPT SOLICITATION. The offense of corrupt solicitation of members of the legislature, or of public officers of the state or any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment. Any person may be compelled to testify in any lawful investigation or judicial

proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or practice of solicitation, and shall not be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding - except for perjury in giving such testimony - and any person convicted of either of the offenses aforesaid, shall as part of the punishment therefor, be disqualified from ever holding any position of honor, trust or profit in this state. **A member who has a private interest in any bill or measure proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.**

ARTICLE IV SECTION 4 JURISDICTION. The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars (\$200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state or any judge thereof.

ARTICLE IV SECTION 9 REMOVAL OF JUDGES, ATTORNEY GENERAL, ETC. **Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall be made unless the officer complained of shall have been served with a copy of the charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses and on the question of removal the ayes and nays shall also be entered on the journal.**

ARTICLE IV SECTION 28 OATH OF JUDGES. Every judge of the supreme court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.

ARTICLE IV SECTION 31 COMMISSION ON JUDICIAL CONDUCT. (1) There shall be a commission on judicial conduct, **existing as an independent agency** of the judicial branch, and consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the limited jurisdiction court judges, two persons admitted to the practice of law in this state selected by the state bar

association, and six persons who are not attorneys appointed by the governor.

(2) Whenever the commission receives a complaint against a judge or justice, or otherwise has reason to believe that a judge or justice should be admonished, reprimanded, censured, suspended, removed, or retired, the commission shall first investigate the complaint or belief and then conduct initial proceedings for the purpose of determining whether probable cause exists for conducting a public hearing or hearings to deal with the complaint or belief. The investigation and initial proceedings shall be confidential. Upon beginning an initial proceeding, the commission shall notify the judge or justice of the existence of and basis for the initial proceeding.

(3) Whenever the commission concludes, based on an initial proceeding, that there is probable cause to believe that a judge or justice has violated a rule of judicial conduct or that the judge or justice suffers from a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties, the commission shall conduct a public hearing or hearings and shall make public all those records of the initial proceeding that provide the basis for its conclusion. If the commission concludes that there is not probable cause, it shall notify the judge or justice of its conclusion.

(4) Upon the completion of the hearing or hearings, the commission in open session shall either dismiss the case, or shall admonish, reprimand, or censure the judge or justice, or shall censure the judge or justice and recommend to the supreme court the suspension or removal of the judge or justice, or shall recommend to the supreme court the retirement of the judge or justice. The commission may not recommend suspension or removal unless it censures the judge or justice for the violation serving as the basis for the recommendation. The commission may recommend retirement of a judge or justice for a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties.

(5) Upon the recommendation of the commission, the supreme court may suspend, remove, or retire a judge or justice. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease. The supreme court shall specify the effect upon salary when it suspends a judge or justice. The supreme court may not suspend, remove, or retire a judge or justice until the commission, after notice and hearing, recommends that action be taken, and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against the judge or justice.

(6) Within thirty days after the commission admonishes, reprimands, or censures a judge or justice, the judge or justice shall have a right of appeal de novo to the supreme court.

(7) Any matter before the commission or supreme court may be disposed of by a stipulation entered into in a public proceeding. The stipulation shall be signed by the judge or justice and the commission or court. The stipulation may impose any terms and conditions deemed appropriate by the commission or court. A stipulation shall set forth all material facts relating to the proceeding and the conduct of the judge or justice.

(8) Whenever the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended immediately, with salary, from his or her judicial position until a final determination is made by the supreme court.

(9) The legislature shall provide for commissioners' terms of office and compensation. The commission shall employ one or more investigative officers with appropriate professional

training and experience. The investigative officers of the commission shall report directly to the commission. The commission shall also employ such administrative or other staff as are necessary to manage the affairs of the commission.

(10) The commission shall, to the extent that compliance does not conflict with this section, comply with laws of general applicability to state agencies with respect to rule-making procedures, and with respect to public notice of and attendance at commission proceedings other than initial proceedings. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings. [AMENDMENT 97, 2005 Senate Joint Resolution No. 8207, pp 2799, 2800. Approved November 8, 2005.]

Removal by legislature: Art. 4 Section 9.

Amendment 85 (1989) -- Art. 4 Section 31 COMMISSION ON JUDICIAL CONDUCT -- (1) *There shall be a commission on judicial conduct, existing as an independent agency of the judicial branch, and consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the district court judges, two persons admitted to the practice of law in this state selected by the state bar association, and six persons who are not attorneys appointed by the governor.*

(2) *Whenever the commission receives a complaint against a judge or justice, or otherwise has reason to believe that a judge or justice should be admonished, reprimanded, censured, suspended, removed, or retired, the commission shall first investigate the complaint or belief and then conduct initial proceedings for the purpose of determining whether probable cause exists for conducting a public hearing or hearings to deal with the complaint or belief. The investigation and initial proceedings shall be confidential. Upon beginning an initial proceeding, the commission shall notify the judge or justice of the existence of and basis for the initial proceeding.*

(3) *Whenever the commission concludes, based on an initial proceeding, that there is probable cause to believe that a judge or justice has violated a rule of judicial conduct or that the judge or justice suffers from a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties, the commission shall conduct a public hearing or hearings and shall make public all those records of the initial proceeding that provide the basis for its conclusion. If the commission concludes that there is not probable cause, it shall notify the judge or justice of its conclusion.*

(4) *Upon the completion of the hearing or hearings, the commission in open session shall either dismiss the case, or shall admonish, reprimand, or censure the judge or justice, or shall censure the judge or justice and recommend to the supreme court the suspension or removal of the judge or justice, or shall recommend to the supreme court the retirement of the judge or justice. The commission may not recommend suspension or removal unless it censures the judge or justice for the violation serving as the basis for the recommendation. The commission may recommend retirement of a judge or justice for a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties.*

(5) *Upon the recommendation of the commission, the supreme court may suspend, remove, or retire a judge or justice. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease. The supreme court shall specify the effect upon salary when it suspends a judge or justice. The supreme court may not suspend, remove, or retire a judge or justice until the commission, after notice and hearing, recommends that action be taken, and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against the judge or justice.*

(6) *Within thirty days after the commission admonishes, reprimands, or censures a judge or justice, the*

judge or justice shall have a right of appeal de novo to the supreme court.

(7) Any matter before the commission or supreme court may be disposed of by a stipulation entered into in a public proceeding. The stipulation shall be signed by the judge or justice and the commission or court. The stipulation may impose any terms and conditions deemed appropriate by the commission or court. A stipulation shall set forth all material facts relating to the proceeding and the conduct of the judge or justice.

(8) Whenever the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended immediately, with salary, from his or her judicial position until a final determination is made by the supreme court.

(9) The legislature shall provide for commissioners' terms of office and compensation. The commission shall employ one or more investigative officers with appropriate professional training and experience. The investigative officers of the commission shall report directly to the commission. The commission shall also employ such administrative or other staff as are necessary to manage the affairs of the commission.

(10) The commission shall, to the extent that compliance does not conflict with this section, comply with laws of general applicability to state agencies with respect to rule-making procedures, and with respect to public notice of and attendance at commission proceedings other than initial proceedings. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings. [AMENDMENT 85, 1989 Substitute Senate Joint Resolution No. 8202, p 3000. Approved November 7, 1989.]

Amendment 77 (1986) -- Art. 4 Section 31 COMMISSION ON JUDICIAL CONDUCT -- REMOVAL, CENSURE, SUSPENSION, OR RETIREMENT OF JUDGES OR JUSTICES -- PROCEEDINGS -- *There shall be a commission on judicial conduct consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the district court judges, two persons admitted to the practice of law in this state selected by the state bar association, and four persons who are not attorneys appointed by the governor and confirmed by the senate.*

The supreme court may censure, suspend, or remove a judge or justice for violating a rule of judicial conduct and may retire a judge or justice for disability which is permanent or is likely to become permanent and which seriously interferes with the performance of judicial duties. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease.

The supreme court shall specify the effect upon salary when disciplinary action other than removal is taken. The supreme court may not discipline or retire a judge or justice until the commission on judicial conduct recommends after notice and hearing that action be taken and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against a judge or justice. Whenever the commission receives a complaint against a judge or justice, it shall first conduct proceedings for the purpose of determining whether sufficient reason exists for conducting a hearing or hearings to deal with the accusations. These initial proceedings shall be confidential, unless confidentiality is waived by the judge or justice, but all subsequent hearings conducted by the commission shall be open to members of the public.

Whenever the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended immediately, with salary, from his or her judicial position until a final determination is made by the supreme court.

The legislature shall provide for commissioners' terms of office and compensation. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings. [AMENDMENT 77, 1986 Senate Joint Resolution No. 136, p 1532. Approved November 4, 1986.]

Amendment 71 (1980) -- Art. 4 Section 31 JUDICIAL QUALIFICATIONS COMMISSION -- REMOVAL, CENSURE, SUSPENSION, OR RETIREMENT OF JUDGES OR JUSTICES --

There shall be a judicial qualifications commission consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the district court judges, two persons admitted to the practice of law in this state selected by the state bar association, and two persons who are not attorneys appointed by the governor and confirmed by the senate.

The supreme court may censure, suspend, or remove a judge or justice for violating a rule of judicial conduct and may retire a judge or justice for disability which is permanent or is likely to become permanent and which seriously interferes with the performance of judicial duties. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease.

The supreme court shall specify the effect upon salary when disciplinary action other than removal is taken. The supreme court may not discipline or retire a judge or justice until the judicial qualifications commission recommends after notice and hearing that action be taken and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against a judge or justice.

The legislature shall provide for commissioners' terms of office and compensation. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings. [AMENDMENT 71, 1980 Substitute House Joint Resolution No. 37, p 652. Approved November 4, 1980.]

Article. • III.

SECTION. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - [between a State and Citizens of another State;-]* between Citizens of different States, - between Citizens of the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof;- and foreign States, Citizens or Subjects.]*

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. • IV.

SECTION. 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]*

Amendment • I. •

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment • II. •

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment • III. •

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment • IV. •

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment • V. •

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment • VII. •

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment • IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment • X. •

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment • XI. •

Passed by Congress March 4, 1794. Ratified February 7, 1795.
(Note: A portion of Article III, Section 2 of the Constitution was modified by the 11th Amendment.)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment • XIII. •

Passed by Congress January 31, 1865. Ratified December 6, 1865.

(Note: A portion of Article IV, Section 2 of the Constitution was changed by the 13th Amendment.)

SECTION 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2.

Congress shall have power to enforce this article by appropriate legislation.

Amendment • XIV.

Passed by Congress June 13, 1866. Ratified July 9, 1868.

(Note: Article I, Section 2 of the Constitution was modified by Section 2 of the 14th Amendment.)

SECTION 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges

or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX

B

RCW 42.17.010

Declaration of policy. (*Effective until January 1, 2012. Recodified as RCW 42.17A.001.*)

It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means

RCW 2.36.020

Kinds of juries.

There shall be three kinds of juries --

(1) A grand jury.

(2) A petit jury.

(3) A jury of inquest.

RCW 2.36.010

Definitions.

Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) A jury is a body of persons temporarily selected from the qualified inhabitants of a particular district, and invested with power --

(a) To present or indict a person for a public offense.

(b) To try a question of fact.

(2) "Court" when used without further qualification means any superior court or court of limited jurisdiction in the state of Washington.

(3) "Judge" means every judicial officer authorized to hold or preside over a court. For purposes of this chapter "judge" does not include court commissioners or referees.

(4) "Juror" means any person summoned for service on a petit jury, grand jury, or jury of inquest as defined in this chapter.

(5) "Grand jury" means those twelve persons impaneled by a superior court to hear, examine, and investigate evidence concerning criminal activity and corruption.

(6) "Petit jury" means a body of persons twelve or less in number in the superior court and six in number in courts of limited jurisdiction, drawn by lot from the jurors in attendance upon the court at a particular session, and sworn to try and determine a question of fact.

(7) "Jury of inquest" means a body of persons six or fewer in number, but not fewer than four persons, summoned before the coroner or other ministerial officer, to inquire of particular facts.

RCW 2.44.020

Appearance without authority — Procedure.

If it be alleged by a party for whom an attorney appears, that he or she does so without authority, the court may, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his or her act; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his or her assumption of authority.

RCW 2.44.030

Production of authority to act.

The court, or a judge, may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he or she appears, and until he or she does so, may stay all proceedings by him or her on behalf of the party for whom he or she assumes to appear.

RCW 42.20.040

False report.

Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.

RCW 42.20.100

Failure of duty by public officer a misdemeanor.

Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their wilful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor.

RCW 42.23.070

Prohibited acts.

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the

officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

RCW 9.05.030

Assemblages of saboteurs.

Whenever two or more persons assemble for the purpose of committing criminal sabotage, as defined in RCW 9.05.060, such an assembly is unlawful, and every person voluntarily and knowingly participating therein by his or her presence, aid, or instigation, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both.

RCW 9.05.060

Criminal sabotage defined — Penalty.

(1) Whoever, with intent that his or her act shall, or with reason to believe that it may, injure, interfere with, interrupt, supplant, nullify, impair, or obstruct the owner's or operator's management, operation, or control of any agricultural, stockraising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile, or building enterprise, or any other public or private business or commercial enterprise, wherein any person is employed for wage, shall willfully damage or destroy, or attempt or threaten to damage or destroy, any property whatsoever, or shall unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property, instrumentality, machine, mechanism, or appliance used in such business or enterprise, shall be guilty of criminal sabotage.

(2) Criminal sabotage is a class B felony punishable according to chapter 9A.20 RCW

RCW 9.38.020

False representation concerning title.

Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

RCW 9.45.060

Encumbered, leased, or rented personal property — Construction.

Every person being in possession thereof, who shall sell, remove, conceal, convert to his or her own use, or destroy or connive at or consent to the sale, removal, conversion, concealment, or destruction of any personal property or any part thereof, upon which a security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease exists, with intent to hinder, delay, or defraud the secured party of such security agreement, or the holder of such mortgage, lien, or conditional sales contract or the lessor under such lease or renter under such rental agreement, or any assignee of such security agreement, mortgage, lien, conditional sales contract, rental agreement or lease shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision

RCW 9.45.080

Fraudulent removal of property.

Every person who, with intent to defraud a prior or subsequent purchaser thereof, or prevent any of his or her property being made liable for the payment of any of his or her debts, or levied upon by an execution or warrant of attachment, shall remove any of his or her property, or secrete, assign, convey, or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey, or otherwise dispose of any of his or her books or accounts, vouchers or writings in any way relating to his or her business affairs, or destroy, obliterate, alter, or erase any of such books of account, accounts, vouchers, or writing or any entry, memorandum, or minute therein contained, shall be guilty of a gross misdemeanor

RCW 9.45.090

Knowingly receiving fraudulent conveyance.

Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him or her in violation of, or with the intent to violate RCW 9.45.080, shall be guilty of a misdemeanor

RCW 9.45.100

Fraud in assignment for benefit of creditors.

Every person who, having made, or being about to make, a general assignment of his or her property to pay his or her debts, shall by color or aid of any false or fraudulent representation, pretense, token, or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his or her claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor.

RCW 10.58.040

Intent to defraud.

Whenever an intent to defraud shall be made an element of an offense, it shall be sufficient if an intent appears to defraud any person, association or body politic or corporate whatsoever.

RCW 9.62.010

Malicious prosecution.

Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years; and

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor

RCW 9.66.010

Public nuisance.

A public nuisance is a crime against the order and economy of the state. Every place

(1) Wherein any fighting between people or animals or birds shall be conducted; or,

(2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

(3) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

(1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

(2) Shall offend public decency; or,

(3) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley, highway, or municipal transit vehicle or station; or,

(4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance.

RCW 9.66.040

Abatement of nuisance.

Any court or magistrate before whom there may be pending any proceeding for a violation of RCW 9.66.030, shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant:

PROVIDED, That if the conviction was had in a district court, the district judge shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein.

RCW 9.72.090

Committal of witness — Detention of

documents.

Whenever it shall appear probable to a judge, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before such judge, magistrate, or officer has committed perjury in any testimony so given, or offered any false evidence, he or she may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for such person's appearance to answer such charge. In such case such judge, magistrate, or officer may detain any book, paper, document, record or other instrument produced before him or her or direct it to be delivered to the prosecuting attorney.

RCW 9.81.020

Subversive activities made felony — Penalty.

(1) It is a class B felony for any person knowingly and willfully to:

(a) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington or any political subdivision of either of them, by revolution, force or violence; or

(b) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of Washington or of any political subdivision of either of them; or

(c) Conspire with one or more persons to commit any such act; or

(d) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing the organization to be a subversive organization or a foreign subversive organization; or

(e) Destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing the organization to be such.

(2) Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than ten thousand dollars, or imprisoned for not more than ten years, or both, at the discretion of the court.

RCW 9.92.120

Conviction of public officer forfeits trust.

The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his or her office, and shall disqualify him or her from ever afterward holding any public office in this state.

RCW 9.94A.411

Evidentiary sufficiency.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

- (A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (B) The completion of necessary laboratory tests; and
- (C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

RCW 9.94A.555

Findings and intent — 1994 c 1.

(1) The people of the state of Washington find and declare that:

- (a) Community protection from persistent offenders is a priority for any civilized society.
- (b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.
- (c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.
- (d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

- (a) Improve public safety by placing the most dangerous criminals in prison.
- (b) Reduce the number of serious, repeat offenders by tougher sentencing.
- (c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.
- (d) Restore public trust in our criminal justice system by directly involving the people in the process

RCW 9A.04.020

Purposes — Principles of construction.

(1) The general purposes of the provisions governing the definition of offenses are:

- (a) To forbid and prevent conduct that inflicts or threatens substantial harm to individual or public interests;
- (b) To safeguard conduct that is without culpability from condemnation as criminal;
- (c) To give fair warning of the nature of the conduct declared to constitute an offense;
- (d) To differentiate on reasonable grounds between serious and minor offenses, and to prescribe proportionate penalties for each.

(2) The provisions of this title shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this title.

RCW 9A.04.110

Definitions.

In this title unless a different meaning plainly is required:

- (1) "Acted" includes, where relevant, omitted to act;
- (2) "Actor" includes, where relevant, a person failing to act;
- (3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;
- (4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;
- (b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;
- (c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;
- (5) "Building," in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;
- (6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;
- (7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;
- (8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;
- (9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;
- (10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

- (11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;
- (12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;
- (13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;
- (14) "Omission" means a failure to act;
- (15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;
- (16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;
- (17) "Person," "he or she," and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;
- (18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;
- (19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;
- (20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;
- (21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;
- (22) "Property" means anything of value, whether tangible or intangible, real or personal;
- (23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;
- (24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;
- (25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;
- (26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;
- (27) "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe;
- (28) "Threat" means to communicate, directly or indirectly the intent:
- (a) To cause bodily injury in the future to the person threatened or to any other person; or
 - (b) To cause physical damage to the property of a person other than the actor; or
 - (c) To subject the person threatened or any other person to physical confinement or restraint; or
 - (d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or
 - (e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred,

contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships;

(29) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(30) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

RCW 9A.08.010

General requirements of culpability.

(1) Kinds of Culpability Defined.

(a) **INTENT.** A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.

(b) **KNOWLEDGE.** A person knows or acts knowingly or with knowledge when:

(i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(c) **RECKLESSNESS.** A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

(d) **CRIMINAL NEGLIGENCE.** A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

(2) **Substitutes for Criminal Negligence, Recklessness, and Knowledge.** When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(3) **Culpability as Determinant of Grade of Offense.** When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

(4) **Requirement of Wilfulness Satisfied by Acting Knowingly.** A requirement that an offense be committed wilfully

is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears.

RCW 9A.08.020

Liability for conduct of another — Complicity.

(1) A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he or she causes an innocent or irresponsible person to engage in such conduct; or

(b) He or she is made accountable for the conduct of such other person by this title or by the law defining the crime; or

(c) He or she is an accomplice of such other person in the commission of the crime.

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:

(i) Solicits, commands, encourages, or requests such other person to commit it; or

(ii) Aids or agrees to aid such other person in planning or committing it; or

(b) His or her conduct is expressly declared by law to establish his or her complicity.

(4) A person who is legally incapable of committing a particular crime himself or herself may be guilty thereof if it is committed by the conduct of another person for which he or she is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

(5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:

(a) He or she is a victim of that crime; or

(b) He or she terminates his or her complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

(6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his or her complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted.

RCW 9A.36.011

Assault in the first degree.

(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

(a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or

(b) Administers, exposes, or transmits to or causes to be taken by another, poison, the human immunodeficiency

virus as defined in chapter 70.24 RCW, or any other destructive or noxious substance; or

(c) Assaults another and inflicts great bodily harm.

(2) Assault in the first degree is a class A felony.

RCW 9A.36.021

Assault in the second degree.

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation or suffocation.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

RCW 9A.36.031

Assault in the third degree.

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period

sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions.

(2) Assault in the third degree is a class C felony.

RCW 9A.36.041

Assault in the fourth degree.

(1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2) Assault in the fourth degree is a gross misdemeanor.

RCW 9A.36.070

Coercion.

(1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in *RCW 9A.04.110(27) (a), (b), or (c).

(3) Coercion is a gross misdemeanor.

RCW 9A.46.060

Crimes included in harassment.

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

(1) Harassment (RCW 9A.46.020);

- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW 9A.36.011);
- (5) Assault of a child in the first degree (RCW 9A.36.120);
- (6) Assault in the second degree (RCW 9A.36.021);
- (7) Assault of a child in the second degree (RCW 9A.36.130);
- (8) Assault in the fourth degree (RCW 9A.36.041);
- (9) Reckless endangerment (RCW 9A.36.050);
- (10) Extortion in the first degree (RCW 9A.56.120);
- (11) Extortion in the second degree (RCW 9A.56.130);
- (12) Coercion (RCW 9A.36.070);
- (13) Burglary in the first degree (RCW 9A.52.020);
- (14) Burglary in the second degree (RCW 9A.52.030);
- (15) Criminal trespass in the first degree (RCW 9A.52.070);
- (16) Criminal trespass in the second degree (RCW 9A.52.080);

RCW 9A.48.070

Malicious mischief in the first degree.

- (1) A person is guilty of malicious mischief in the first degree if he or she knowingly and maliciously:
 - (a) Causes physical damage to the property of another in an amount exceeding five thousand dollars;
 - (b) Causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or
 - (c) Causes an impairment of the safety, efficiency, or operation of an aircraft by physically damaging or tampering with the aircraft or aircraft equipment, fuel, lubricant, or parts.
- (2) Malicious mischief in the first degree is a class B felony.

RCW 9A.56.010

Definitions.

The following definitions are applicable in this chapter unless the context otherwise requires:

- (1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of," "owned by," or other markings or words identifying ownership;

(4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(5) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed;

(6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(7) "Mail," in addition to its common meaning, means any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States postal service or any commercial carrier performing the function of delivering similar items to residences or businesses, provided the mail:

(a)(i) Is addressed with a specific person's name, family name, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(ii) Is not addressed to a generic unnamed occupant or resident of the address without an identifiable person, family, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(b) Has been left for collection or delivery in any letter box, mailbox, mail receptacle, or other authorized depository for mail, or given to a mail carrier, or left with any private business that provides mailboxes or mail addresses for customers or when left in a similar location for collection or delivery by any commercial carrier; or

(c) Is in transit with a postal service, mail carrier, letter carrier, commercial carrier, or that is at or in a postal vehicle, postal station, mailbox, postal airplane, transit station, or similar location of a commercial carrier; or

(d) Has been delivered to the intended address, but has not been received by the intended addressee.

Mail, for purposes of chapter 164, Laws of 2011, does not include magazines, catalogs, direct mail inserts, newsletters, advertising circulars, or any mail that is considered third-class mail by the United States postal service;

(8) "Mailbox," in addition to its common meaning, means any authorized depository or receptacle of mail for the United States postal service or authorized depository for a commercial carrier that provides services to the general public, including any address to which mail is or can be addressed, or a place where the United States postal service or equivalent commercial carrier delivers mail to its addressee;

(9) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(10) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally

recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(11) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(12) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

(13) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(14) "Received by the intended addressee" means that the addressee, owner of the delivery mailbox, or authorized agent has removed the delivered mail from its delivery mailbox;

(15) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(16) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(17) "Stolen" means obtained by theft, robbery, or extortion;

(18) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

(19) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

(20) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

(21) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Except as provided in RCW 9A.56.340(4) and 9A.56.350(4), whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining

the degree of theft involved.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(22) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement.

RCW 9A.56.020

Theft — Definition, defense.

(1) "Theft" means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

(2) In any prosecution for theft, it shall be a sufficient defense that:

(a) The property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable; or

(b) The property was merchandise pallets that were received by a pallet recycler or repairer in the ordinary course of its business.

RCW 9A.56.030

Theft in the first degree — Other than firearm or motor vehicle.

(1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) five thousand dollars in value other than a firearm as defined in RCW 9.41.010;

(b) Property of any value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, taken from the person of another; or

(c) A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty.

(2) Theft in the first degree is a class B felony.

RCW 9A.56.040

Theft in the second degree — Other than firearm or motor vehicle.

(1) A person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle; or

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or

(c) An access device.

(2) Theft in the second degree is a class C felony.

RCW 9A.56.190

Robbery — Definition.

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

RCW 9A.56.210

Robbery in the second degree.

(1) A person is guilty of robbery in the second degree if he or she commits robbery.

(2) Robbery in the second degree is a class B felony.

RCW 9A.60.010

Definitions.

The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

- (1) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;
- (2) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
- (3) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;
- (4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;
- (5) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing thereof;
- (6) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;
- (7) "Written instrument" means: (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or (b) any access device, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification

RCW 9A.60.020

Forgery.

- (1) A person is guilty of forgery if, with intent to injure or defraud:
 - (a) He or she falsely makes, completes, or alters a written instrument or;
 - (b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.
- (2) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.
- (3) Forgery is a class C felony.

RCW 9A.60.030

Obtaining a signature by deception or duress.

- (1) A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he or she causes another person to sign or execute a written instrument.
- (2) Obtaining a signature by deception or duress is a class C felony.

RCW 9A.60.040

Criminal impersonation in the first degree.

(1) A person is guilty of criminal impersonation in the first degree if the person:

(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation in the first degree is a class C felony.

RCW 9A.60.050

False certification.

(1) A person is guilty of false certification, if, being an officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, he or she knowingly certifies falsely that the execution of such instrument was acknowledged by any party thereto or that the execution thereof was proved.

(2) False certification is a gross misdemeanor.

RCW 9A.68.010

Bribery.

(1) A person is guilty of bribery if:

(a) With the intent to secure a particular result in a particular matter involving the exercise of the public servant's vote, opinion, judgment, exercise of discretion, or other action in his or her official capacity, he or she offers, confers, or agrees to confer any pecuniary benefit upon such public servant; or

(b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion, or other action as a public servant will be used to secure or attempt to secure a particular result in a particular matter.

(2) It is no defense to a prosecution under this section that the public servant sought to be influenced was not qualified to act in the desired way, whether because he or she had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class B felony.

RCW 9A.68.020

Requesting unlawful compensation.

(1) A public servant is guilty of requesting unlawful compensation if he or she requests a pecuniary benefit for the performance of an official action knowing that he or she is required to perform that action without compensation or at a level of compensation lower than that requested.

(2) Requesting unlawful compensation is a class C felony.

RCW 9A.68.030

Receiving or granting unlawful compensation.

(1) A person is guilty of receiving or granting unlawful compensation if:

(a) Being a public servant, he or she requests, accepts, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction regarding which he or she knows he or she is likely to have an official discretion to exercise; or

(b) He or she knowingly offers, pays, or agrees to pay compensation to a public servant for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction regarding which the public servant is likely to have an official discretion to exercise.

(2) Receiving or granting unlawful compensation is a class C felony.

RCW 9A.68.040

Trading in public office.

(1) A person is guilty of trading in public office if:

(a) He or she offers, confers, or agrees to confer any pecuniary benefit upon a public servant pursuant to an agreement or understanding that such actor will or may be appointed to a public office; or

(b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit from another person pursuant to an agreement or understanding that such person will or may be appointed to a public office.

(2) Trading in public office is a class C felony.

RCW 9A.68.050

Trading in special influence.

(1) A person is guilty of trading in special influence if:

(a) He or she offers, confers, or agrees to confer any pecuniary benefit upon another person pursuant to an agreement or understanding that such other person will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter; or

(b) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter.

(2) Trading in special influence is a class C felony.

RCW 9A.68.060

Commercial bribery.

(1) For purposes of this section:

- (a) "Claimant" means a person who has or is believed by an actor to have an insurance claim.
- (b) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.
- (c) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.
- (d) "Trusted person" means:
 - (i) An agent, employee, or partner of another;
 - (ii) An administrator, executor, conservator, guardian, receiver, or trustee of a person or an estate, or any other person acting in a fiduciary capacity;
 - (iii) An accountant, appraiser, attorney, physician, or other professional adviser;
 - (iv) An officer or director of a corporation, or any other person who participates in the affairs of a corporation, partnership, or unincorporated association; or
 - (v) An arbitrator, mediator, or other purportedly disinterested adjudicator or referee.

(2) A person is guilty of commercial bribery if:

- (a) He or she offers, confers, or agrees to confer a pecuniary benefit directly or indirectly upon a trusted person under a request, agreement, or understanding that the trusted person will violate a duty of fidelity or trust arising from his or her position as a trusted person;
- (b) Being a trusted person, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself, herself, or another under a request, agreement, or understanding that he or she will violate a duty of fidelity or trust arising from his or her position as a trusted person; or
- (c) Being an employee or agent of an insurer, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself or herself, or a person other than the insurer, under a request, agreement, or understanding that he or she will or a threat that he or she will not refer or induce claimants to have services performed by a service provider.

(3) It is not a defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because the person had not yet assumed his or her position, lacked authority, or for any other reason.

(4) Commercial bribery is a class B felony.

RCW 42.20.070

Misappropriation and falsification of accounts by public officer.

Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town, or any school, diking, drainage, or irrigation district, who:

(1) Appropriates to his or her own use or the use of any person not entitled thereto, without authority of law, any money so received by him or her as such officer or otherwise; or

(2) Knowingly keeps any false account, or makes any false entry or erasure in any account, of or relating to any

money so received by him or her; or

(3) Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or

(4) Willfully omits or refuses to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, city, town, or such school, diking, drainage, or irrigation district or to the proper officer or authority empowered to demand and receive the same, any money received by him or her as such officer when it is a duty imposed upon him or her by law to pay over and account for the same,

is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than fifteen years

RCW 42.20.080

Other violations by officers.

Every officer or other person mentioned in RCW 42.20.070, who shall wilfully disobey any provision of law regulating his official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor

RCW 42.20.100

Failure of duty by public officer a misdemeanor.

Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their wilful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor.

RCW 42.20.110

Improper conduct by certain justices.

It shall be a misdemeanor for any judge or justice of any court not of record, during the hearing of any cause or proceeding therein, to address any person in his presence in unfit, unseemly or improper language.

RCW 9A.72.010

Definitions.

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he or she made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury as provided in RCW 9A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision or when the oath is administered by a person authorized by state or federal law to administer oaths;

(4) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

RCW 9A.72.020

Perjury in the first degree.

(1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his or her statement was not material is not a defense to a prosecution under this section.

(3) Perjury in the first degree is a class B felony.

RCW 9A.72.030

Perjury in the second degree.

(1) A person is guilty of perjury in the second degree if, in an examination under oath under the terms of a contract of insurance, or with intent to mislead a public servant in the performance of his or her duty, he or she makes a materially false statement, which he or she knows to be false under an oath required or authorized by law.

(2) Perjury in the second degree is a class C felony.

RCW 9A.72.040

False swearing.

(1) A person is guilty of false swearing if he or she makes a false statement, which he or she knows to be false, under an oath required or authorized by law.

(2) False swearing is a gross misdemeanor

RCW 9A.72.050

Perjury and false swearing — Inconsistent statements — Degree of crime.

(1) Where, in the course of one or more official proceedings, a person makes inconsistent material statements under oath, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the defendant to be false. In such case it shall not be necessary for the prosecution to prove which material statement was false but only that one or the other was false and known by the defendant to be false.

(2) The highest offense of which a person may be convicted in such an instance as set forth in subsection (1) of this section shall be determined by hypothetically assuming each statement to be false. If perjury of different degrees would be established by the making of the two statements, the person may only be convicted of the lesser degree. If perjury or false swearing would be established by the making of the two statements, the person may only be convicted of false swearing. For purposes of this section, no corroboration shall be required of either inconsistent statement.

RCW 9A.72.110

Intimidating a witness.

(1) A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:

(a) Influence the testimony of that person;

(b) Induce that person to elude legal process summoning him or her to testify;

(c) Induce that person to absent himself or herself from such proceedings; or

(d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) A person also is guilty of intimidating a witness if the person directs a threat to a former witness because of the witness's role in an official proceeding.

(3) As used in this section:

(a) "Threat" means:

(i) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(ii) Threat as defined in *RCW 9A.04.110(27).

(b) "Current or prospective witness" means:

(i) A person endorsed as a witness in an official proceeding;

(ii) A person whom the actor believes may be called as a witness in any official proceeding; or

(iii) A person whom the actor has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child.

- (c) "Former witness" means:
- (i) A person who testified in an official proceeding;
 - (ii) A person who was endorsed as a witness in an official proceeding;
 - (iii) A person whom the actor knew or believed may have been called as a witness if a hearing or trial had been held; or
 - (iv) A person whom the actor knew or believed may have provided information related to a criminal investigation or an investigation into the abuse or neglect of a minor child.
- (4) Intimidating a witness is a class B felony.
- (5) For purposes of this section, each instance of an attempt to intimidate a witness constitutes a separate offense.

RCW 9A.72.120

Tampering with a witness.

- (1) A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:
- (a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or
 - (b) Absent himself or herself from such proceedings; or
 - (c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.
- (2) Tampering with a witness is a class C felony.
- (3) For purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense.

RCW 9A.72.150

Tampering with physical evidence.

- (1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:
- (a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or
 - (b) Knowingly presents or offers any false physical evidence.
- (2) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.
- (3) Tampering with physical evidence is a gross misdemeanor.

RCW 9A.76.050

Rendering criminal assistance — Definition of term.

As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he or she:

- (1) Harbors or conceals such person; or
- (2) Warns such person of impending discovery or apprehension; or
- (3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or
- (4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or
- (5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or
- (6) Provides such person with a weapon.

RCW 9A.76.080

Rendering criminal assistance in the second degree.

(1) A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the second degree is a gross misdemeanor.

(b) Rendering criminal assistance in the second degree is a misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060.

RCW 9A.76.100

Compounding.

(1) A person is guilty of compounding if:

(a) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will refrain from initiating a prosecution for a crime; or

(b) He or she confers, or offers or agrees to confer, any pecuniary benefit upon another pursuant to an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

(2) In any prosecution under this section, it is a defense if established by a preponderance of the evidence that the

pecuniary benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

(3) Compounding is a gross misdemeanor

RCW 9A.76.175

Making a false or misleading statement to a public servant.

A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

Chapter 9A.80 RCW

Abuse of office

[Chapter Listing](#)

RCW Sections

[9A.80.010](#) Official misconduct.

9A.80.010

Official misconduct.

(1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

- (a) He or she intentionally commits an unauthorized act under color of law; or
- (b) He or she intentionally refrains from performing a duty imposed upon him or her by law.

(2) Official misconduct is a gross misdemeanor.

RCW 9A.82.060

Leading organized crime.

(1) A person commits the offense of leading organized crime by:

(a) Intentionally organizing, managing, directing, supervising, or financing any three or more persons with the intent to engage in a pattern of criminal profiteering activity; or

(b) Intentionally inciting or inducing others to engage in violence or intimidation with the intent to further or promote

the accomplishment of a pattern of criminal profiteering activity.

(2)(a) Leading organized crime as defined in subsection (1)(a) of this section is a class A felony.

(b) Leading organized crime as defined in subsection (1)(b) of this section is a class B felony.

RCW 9A.82.080

Use of proceeds of criminal profiteering — Controlling enterprise or realty — Conspiracy or attempt.

(1)(a) It is unlawful for a person who has knowingly received any of the proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) A violation of this subsection is a class B felony.

(2)(a) It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.

(b) A violation of this subsection is a class B felony.

(3)(a) It is unlawful for a person knowingly to conspire or attempt to violate subsection (1) or (2) of this section.

RCW 9A.82.130

Criminal profiteering lien — Trustee of real property.

(1) A trustee who is personally served in the manner provided for service of legal process with written notice that a lien notice has been recorded or a civil proceeding or criminal proceeding has been instituted under this chapter against any person for whom the trustee holds legal or record title to real property, shall immediately furnish to the attorney general or county prosecuting attorney the following:

(a) The name and address of the person, as known to the trustee;

(b) To the extent known to the trustee, the name and address of all other persons for whose benefit the trustee holds title to the real property; and

(c) If requested by the attorney general or county prosecuting attorney, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the real property.

(2) The recording of a lien notice shall not constitute a lien on the record title to real property owned by a trustee at the time of recording except to the extent that trustee is named in and served with the lien notice as provided in subsection (1) of this section. The attorney general or county prosecuting attorney may bring a civil proceeding in superior court against the trustee to recover from the trustee the amounts set forth in RCW 9A.82.150. In addition to amounts recovered under RCW 9A.82.150, the attorney general or county prosecuting attorney also may recover its investigative costs and attorneys' fees.

(3) The recording of a lien notice does not affect the use to which real property or a beneficial interest owned by the person named in the lien notice may be put or the right of the person to receive any avails, rents, or other

proceeds resulting from the use and ownership except the sale of the property, until a judgment of forfeiture is entered.

(4) This section does not apply to any conveyance by a trustee under a court order unless the court order is entered in an action between the trustee and the beneficiary.

(5) Notwithstanding that a trustee is served with notice as provided in subsection (1) of this section, this section does not apply to a conveyance by a trustee required under the terms of any trust agreement in effect before service of such notice on the trustee

RCW 9A.82.160

Criminal profiteering lien — Trustee's failure to comply, evasion of procedures or lien.

(1) A trustee who knowingly fails to comply with RCW 9A.82.130(1) is guilty of a gross misdemeanor.

(2) A trustee who conveys title to real property after service of the notice as provided in RCW 9A.82.130(1) with the intent to evade the provisions of RCW 9A.82.100 or 9A.82.120 with respect to such property is guilty of a class C felony.

RCW 9A.83.010

Definitions.

The definitions set forth in this section apply throughout this chapter.

(1) "Conducts a financial transaction" includes initiating, concluding, or participating in a financial transaction.

(2) "Financial institution" means a bank, savings bank, credit union, or savings and loan institution.

(3) "Financial transaction" means a purchase, sale, loan, pledge, gift, transfer, transmission, delivery, trade, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, or any other acquisition or disposition of property, by whatever means effected.

(4) "Knows the property is proceeds of specified unlawful activity" means believing based upon the representation of a law enforcement officer or his or her agent, or knowing that the property is proceeds from some form, though not necessarily which form, of specified unlawful activity.

(5) "Proceeds" means any interest in property directly or indirectly acquired through or derived from an act or omission, and any fruits of this interest, in whatever form.

(6) "Property" means anything of value, whether real or personal, tangible or intangible.

(7) "Specified unlawful activity" means an offense committed in this state that is a class A or B felony under Washington law or that is listed as "criminal profiteering" in RCW 9A.82.010, or an offense committed in any other state that is punishable under the laws of that state by more than one year in prison, or an offense that is punishable under federal law by more than one year in prison

RCW 9A.83.020

Money laundering.

(1) A person is guilty of money laundering when that person conducts or attempts to conduct a financial transaction involving the proceeds of specified unlawful activity and:

(a) Knows the property is proceeds of specified unlawful activity; or

(b) Knows that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, and acts recklessly as to whether the property is proceeds of specified unlawful activity; or

(c) Knows that the transaction is designed in whole or in part to avoid a transaction reporting requirement under federal law.

(2) In consideration of the constitutional right to counsel afforded by the Fifth and Sixth amendments to the United States Constitution and Article 1, Section 22 of the Constitution of Washington, an additional proof requirement is imposed when a case involves a licensed attorney who accepts a fee for representing a client in an actual criminal investigation or proceeding. In these situations, the prosecution is required to prove that the attorney accepted proceeds of specified unlawful activity with intent:

(a) To conceal or disguise the nature, location, source, ownership, or control of the proceeds, knowing the property is proceeds of specified unlawful activity; or

(b) To avoid a transaction reporting requirement under federal law.

The proof required by this subsection is in addition to the requirements contained in subsection (1) of this section.

(3) An additional proof requirement is imposed when a case involves a financial institution and one or more of its employees. In these situations, the prosecution is required to prove that proceeds of specified unlawful activity were accepted with intent:

(a) To conceal or disguised [disguise] the nature, location, source, ownership, or control of the proceeds, knowing the property is proceeds of specified unlawful activity; or

(b) To avoid a transaction reporting requirement under federal law.

The proof required by this subsection is in addition to the requirements contained in subsection (1) of this section.

(4) Money laundering is a class B felony.

(5) A person who violates this section is also liable for a civil penalty of twice the value of the proceeds involved in the financial transaction and for the costs of the suit, including reasonable investigative and attorneys' fees.

(6) Proceedings under this chapter shall be in addition to any other criminal penalties, civil penalties, or forfeitures authorized under state law.

RCW 9A.83.030

Seizure and forfeiture.

(1) Proceeds traceable to or derived from specified unlawful activity or a violation of RCW 9A.83.020 are subject to seizure and forfeiture. The attorney general or county prosecuting attorney may file a civil action for the forfeiture of proceeds. Unless otherwise provided for under this section, no property rights exist in these proceeds. All right, title, and interest in the proceeds shall vest in the governmental entity of which the seizing law enforcement agency is a part upon commission of the act or omission giving rise to forfeiture under this section.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by a superior court that has jurisdiction over the property. Any agency seizing real property shall file a lis pendens concerning the property. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later. Real property seized under this section may be transferred or conveyed to any person or entity who acquires

title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant issued pursuant to RCW 69.50.502; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter.

(3) A seizure under subsection (2) of this section commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized proceeds to be served within fifteen days after the seizure on the owner of the property seized and the person in charge thereof and any person who has a known right or interest therein, including a community property interest. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the property seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The provisions of RCW 69.50.505(5) shall apply to any such hearing. The seizing law enforcement agency shall promptly return property to the claimant upon the direction of the administrative law judge or court.

(6) Disposition of forfeited property shall be made in the manner provided for in RCW 69.50.505 (8) through (10) and (14).

RCW 2.48.210

Oath on admission.

Every person before being admitted to practice law in this state shall take and subscribe the following oath:

I do solemnly swear:

I am a citizen of the United States and owe my allegiance thereto;

I will support the Constitution of the United States and the Constitution of the state of Washington;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God.

RCW 2.48.220

Grounds of disbarment or suspension.

An attorney or counselor may be disbarred or suspended for any of the following causes arising after his or her admission to practice:

- (1) His or her conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence.
- (2) Willful disobedience or violation of an order of the court requiring him or her to do or forbear an act connected with, or in the course of, his or her profession, which he or she ought in good faith to do or forbear.
- (3) Violation of his or her oath as an attorney, or of his or her duties as an attorney and counselor.
- (4) Corruptly or willfully, and without authority, appearing as attorney for a party to an action or proceeding.
- (5) Lending his or her name to be used as attorney and counselor by another person who is not an attorney and counselor.
- (6) For the commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his or her relations as an attorney or counselor at law, or otherwise, and whether the same constitute a felony or misdemeanor or not; and if the act constitute a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disbarment or suspension from practice therefor.
- (7) Misrepresentation or concealment of a material fact made in his or her application for admission or in support thereof.
- (8) Disbarment by a foreign court of competent jurisdiction.
- (9) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney or with any person not a licensed attorney.
- (10) Gross incompetency in the practice of the profession.
- (11) Violation of the ethics of the profession.

RCW 2.48.230

Code of ethics.

The code of ethics of the American Bar Association shall be the standard of ethics for the members of the bar of this state.

[1921 c 126 § 15; RRS § 139-15. Prior: 1917 c 115 § 20.]

RCW 4.04.010

Extent to which common law prevails.

The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state.

RCW 4.40.060

Trial of certain issues of fact — Jury.

An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees.

RCW 4.40.070

Trial of other issues of fact.

Every other issue of fact shall be tried by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or referred.

RCW 4.44.090

Questions of fact for jury.

All questions of fact other than those mentioned in RCW 4.44.080, shall be decided by the jury, and all evidence thereon addressed to them.

RCW 6.32.270

Adjudication of title to property — Jury trial.

In any supplemental proceeding, where it appears to the court that a judgment debtor may have an interest in or title to any real property, and such interest or title is disclaimed by the judgment debtor or disputed by another person, or it appears that the judgment debtor may own or have a right of possession to any personal property, and such ownership or right of possession is substantially disputed by another person, the court may, if the person or persons claiming adversely be a party to the proceeding, adjudicate the respective interests of the parties in such real or personal property, and may determine such property to be wholly or in part the property of the judgment debtor. If the person claiming adversely to the judgment debtor be not a party to the proceeding, the court shall by show cause order or otherwise cause such person to be brought in and made a party thereto, and shall set such proceeding for hearing on the first open date in the trial calendar. Any person so made a party, or any party to the original proceeding, may have such issue determined by a jury upon demand therefor and payment of a jury fee as in other civil actions: PROVIDED, That such person would be entitled to a jury trial if the matter was adjudicated in a separate action.

RCW 7.16.040

Grounds for granting writ.

A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.

RCW 7.16.120

Questions involving merits to be determined.

The questions involving the merits to be determined by the court upon the hearing are:

- (1) Whether the body or officer had jurisdiction of the subject matter of the determination under review.
- (2) Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination.
- (3) Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator.
- (4) Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination.
- (5) Whether the factual determinations were supported by substantial evidence.

RCW 7.16.210

Questions of fact, how determined.

If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the appellant may have sustained, in case they find for him or her.

RCW 7.28.070

Adverse possession under claim and color of title — Payment of taxes.

Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section.

RCW 7.69.010

Intent.

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a significant role in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

RCW 7.69.020

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Survivor" or "survivors" of a victim of crime means a spouse or domestic partner, child, parent, legal guardian, sibling, or grandparent. If there is more than one survivor of a victim of crime, one survivor shall be designated by the prosecutor to represent all survivors for purposes of providing the notice to survivors required by this chapter.

(3) "Victim" means a person against whom a crime has been committed or the representative of a person against whom a crime has been committed.

(4) "Victim impact statement" means a statement submitted to the court by the victim or a survivor, individually or with the assistance of the prosecuting attorney if assistance is requested by the victim or survivor, which may include but is not limited to information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.

(5) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.

(6) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

RCW 7.69.030

Rights of victims, survivors, and witnesses.

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement

officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

(2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

(3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance. Victims of domestic violence, sexual assault, or stalking, as defined in RCW 49.76.020, shall be notified of their right to reasonable leave from employment under chapter 49.76 RCW;

(10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

(11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

(12) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;

(13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

(14) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions; and

(15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment.

APPENDIX

C

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 1--GENERAL PROVISIONS

Sec. 3. Accessory after the fact

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 1--GENERAL PROVISIONS

Sec. 4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 1--GENERAL PROVISIONS

Sec. 13. Laws of States adopted for areas within Federal jurisdiction

(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b)(1) Subject to paragraph (2) and for purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law. Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the United States.

(2)(A) In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district,

the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, not more than 5 years, or if death of a minor is caused, not more than 10 years, and an additional fine under this title, or both, if--

(i) a minor (other than the offender) was present in the motor vehicle when the offense was committed; and

(ii) the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (i).

(B) For the purposes of subparagraph (A), the term ``minor'' means a person less than 18 years of age.

(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Commonwealth, territory, possession, or district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed, for purposes of subsection (a), to lie within the area of the State, Commonwealth, territory, possession, or district that it would lie within if the boundaries of such State, Commonwealth, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 9--BANKRUPTCY

Sec. 152. Concealment of assets; false oaths and claims; bribery

A person who--

(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;

(2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;

(3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;

(4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;

(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;

(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and

fraudulently transfers or conceals any of his property or the property of such other person or corporation;

(8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

(9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor, shall be fined under this title, imprisoned not more than 5 years, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE
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Sec. 153. Embezzlement against estate

(a) Offense.--A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

(b) Person to Whom Section Applies.--A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.

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Sec. 154. Adverse interest and conduct of officers

A person who, being a custodian, trustee, marshal, or other officer of the court--

(1) knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;

(2) knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so; or

(3) knowingly refuses to permit a reasonable opportunity for the inspection by the United States Trustee of the documents and accounts relating to the affairs of an estate in the person's charge,

shall be fined under this title and shall forfeit the person's office, which shall thereupon become vacant.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES
CHAPTER 9--BANKRUPTCY

Sec. 155. Fee agreements in cases under title 11 and
receiverships

Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership or case under title 11 in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES
CHAPTER 9--BANKRUPTCY

Sec. 156. Knowing disregard of bankruptcy law or rule

(a) Definitions.--In this section--

(1) the term ``bankruptcy petition preparer'' means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing; and

(2) the term ``document for filing'' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under title 11.

(b) Offense.--If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined under this title, imprisoned not more than 1 year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES
CHAPTER 9--BANKRUPTCY

Sec. 158. Designation of United States attorneys and agents of
the Federal Bureau of Investigation to address abusive
reaffirmations of debt and materially fraudulent statements in
bankruptcy schedules

(a) In General.--The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

(b) United States Attorneys and Agents of the Federal Bureau of Investigation.--The individuals referred to in subsection (a) are--

(1) the United States attorney for each judicial district of the United States; and

(2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

(c) Bankruptcy Investigations.--Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

(d) Bankruptcy Procedures.--The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 201. Bribery of public officials and witnesses

(a) For the purpose of this section--

(1) the term ``public official'' means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term ``person who has been selected to be a public official'' means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term ``official act'' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever--

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent--

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

- (A) being influenced in the performance of any official act;
- (B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
- (C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absentsing himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever--

(1) otherwise than as provided by law for the proper discharge of official duty--

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or

other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 210. Offer to procure appointive public office

Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 211. Acceptance or solicitation to obtain appointive public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined under this title or imprisoned not more than one year, or both.

Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined under this title, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 217. Acceptance of consideration for adjustment of farm indebtedness

Whoever, being an officer or employee of, or person acting for the United States or any agency thereof, accepts any fee, commission, gift, or other consideration in connection with the compromise, adjustment, or

cancellation of any farm indebtedness as provided by sections 1150, 1150a, and 1150b of Title 12, shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 218. Voiding transactions in violation of chapter; recovery by the United States

In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 13--CIVIL RIGHTS

Sec. 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured--

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 13--CIVIL RIGHTS

Sec. 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his

color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 19--CONSPIRACY

Sec. 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 31--EMBEZZLEMENT AND THEFT

Sec. 641. Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted--

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

The word ``value'' means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 31--EMBEZZLEMENT AND THEFT

Sec. 645. Court officers generally

Whoever, being a United States marshal, clerk, receiver, referee, trustee, or other officer of a United States court, or any deputy, assistant, or employee of any such officer, retains or converts to his own use or to the use of another or after demand by the party entitled thereto, unlawfully retains any money coming into his hands by virtue of his official relation, position or employment, is guilty of embezzlement and shall, where the offense is not otherwise punishable by enactment of Congress, be fined under this title or not more than double the value of the money so embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

It shall not be a defense that the accused person had any interest in such moneys or fund.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 31--EMBEZZLEMENT AND THEFT

Sec. 654. Officer or employee of United States converting property of another

Whoever, being an officer or employee of the United States or of any department or agency thereof, embezzles or wrongfully converts to his own use the money or property of another which comes into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or employee, shall be fined under this title or not more than the value of the money and property thus embezzled or converted, whichever is greater, or imprisoned not more than ten years, or both; but if the sum embezzled is \$1,000 or less, he shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 31--EMBEZZLEMENT AND THEFT

Sec. 662. Receiving stolen property within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, buys, receives, or conceals any money, goods, bank notes, or other thing which may be the subject of larceny, which has been feloniously taken, stolen, or embezzled, from any other person, knowing the same to have been so taken, stolen, or embezzled, shall be fined under this title or imprisoned not more than three years, or both; but if the amount or value of thing so taken, stolen or embezzled does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 47--FRAUD AND FALSE STATEMENTS

Sec. 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to--

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 47--FRAUD AND FALSE STATEMENTS

Sec. 1013. Farm loan bonds and credit bank debentures

Whoever deceives, defrauds, or imposes upon, or attempts to deceive, defraud, or impose upon any person, partnership, corporation, or association by making any false pretense or representation concerning the character, issue, security, contents, conditions, or terms of any farm loan bond, or coupon, issued by any Federal land bank or banks; or of any debenture, coupon, or other obligation, issued by any Federal intermediate credit bank or banks; or by falsely pretending or representing that any farm loan bond, or coupon, is anything other than, or different from, what it purports to be on the face of said bond or coupon, shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 47--FRAUD AND FALSE STATEMENTS

Sec. 1016. Acknowledgment of appearance or oath

Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, knowingly makes any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter submitted to, made with, or taken on behalf of the United States or any department or agency thereof, concerning which an oath or

affirmation is required by law or lawful regulation, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined under this title or imprisoned not more than two years, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES

CHAPTER 47--FRAUD AND FALSE STATEMENTS

Sec. 1018. Official certificates or writings

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES

CHAPTER 47--FRAUD AND FALSE STATEMENTS

Sec. 1021. Title records

Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, knowingly certifies falsely that such conveyance or instrument has or has not been recorded, shall be fined under this title or imprisoned not more than five years, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES

CHAPTER 47--FRAUD AND FALSE STATEMENTS

Sec. 1026. Compromise, adjustment, or cancellation of farm indebtedness

Whoever knowingly makes any false statement for the purpose of influencing in any way the action of the Secretary of Agriculture, or of any person acting under his authority, in connection with any compromise, adjustment, or cancellation of any farm indebtedness as provided by sections 1150, 1150a, and 1150b of Title 12, shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES

CHAPTER 63--MAIL FRAUD

Sec. 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do,

places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 63--MAIL FRAUD

Sec. 1344. Bank fraud

Whoever knowingly executes, or attempts to execute, a scheme or artifice--

- (1) to defraud a financial institution; or
- (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 63--MAIL FRAUD

Sec. 1349. Attempt and conspiracy

Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 73--OBSTRUCTION OF JUSTICE

Sec. 1512. Tampering with a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person, with intent to--

- (A) prevent the attendance or testimony of any person in an official proceeding;
- (B) prevent the production of a record, document, or other object, in an official proceeding; or
- (C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to--
(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to--

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is--

(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;

(B) in the case of--

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 20 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to--

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to--

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation \1\ supervised

release, \1\ parole, or release pending judicial proceedings; shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever corruptly--

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from--

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation \1\ supervised release, \1\ parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section--

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance--

(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the

district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 73--OBSTRUCTION OF JUSTICE

Sec. 1513. Retaliating against a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for--

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation \1\ supervised release,, \1\ parole, or release pending judicial proceedings, shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is--

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 20 years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for--

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation \1\ supervised release,, \1\ parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.

(c) If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(d) There is extraterritorial Federal jurisdiction over an offense under this section.

(e) \2\ Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this

title or imprisoned not more than 10 years, or both.

(e) \2\ Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 73--OBSTRUCTION OF JUSTICE

Sec. 1514. Civil action to restrain harassment of a victim or witness

(a)(1) A United States district court, upon application of the attorney for the Government, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

(2)(A) A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the attorney for the Government, that such notice should not be required and that there is a reasonable probability that the Government will prevail on the merits.

(B) A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.

(C) A temporary restraining order issued under this section shall expire at such time, not to exceed 10 days from issuance, as the court directs; the court, for good cause shown before expiration of such order, may extend the expiration date of the order for up to 10 days or for such longer period agreed to by the adverse party.

(D) When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character, and when such motion comes on for hearing, if the attorney for the Government does not proceed with the application for a protective order, the court shall dissolve the temporary restraining order.

(E) If on two days notice to the attorney for the Government or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(F) A temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

(b)(1) A United States district court, upon motion of the attorney for the Government, shall issue a protective order prohibiting harassment of a victim or witness in a Federal criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an

offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

(2) At the hearing referred to in paragraph (1) of this subsection, any adverse party named in the complaint shall have the right to present evidence and cross-examine witnesses.

(3) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

(4) The court shall set the duration of effect of the protective order for such period as the court determines necessary to prevent harassment of the victim or witness but in no case for a period in excess of three years from the date of such order's issuance. The attorney for the Government may, at any time within ninety days before the expiration of such order, apply for a new protective order under this section.

(c) As used in this section--

(1) the term ``harassment'' means a course of conduct directed at a specific person that--

(A) causes substantial emotional distress in such person;
and

(B) serves no legitimate purpose; and

(2) the term ``course of conduct'' means a series of acts over a period of time, however short, indicating a continuity of purpose.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 73--OBSTRUCTION OF JUSTICE

Sec. 1519. Destruction, alteration, or falsification of records
in Federal investigations and bankruptcy

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 79--PERJURY

sec. 1621. Perjury generally

Whoever--

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title

28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 79--PERJURY

Sec. 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if--

- (1) each declaration was material to the point in question, and
- (2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 93--PUBLIC OFFICERS AND EMPLOYEES

Sec. 1911. Receiver mismanaging property

Whoever, being a receiver, trustee, or manager in possession of any property in any cause pending in any court of the United States, willfully fails to manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof, shall be fined under this title or imprisoned not more than one year, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 95--RACKETEERING

Sec. 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section--

(1) The term ``robbery'' means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term ``extortion'' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term ``commerce'' means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 95--RACKETEERING

Sec. 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation

of section 7201 or 7206 of the Internal Revenue Code of 1986; or
(B) knowing that the transaction is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the

term ``represented'' means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.--

(1) In general.--Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of--

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) Jurisdiction over foreign persons.--For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and--

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.--A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.--

(A) In general.--A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.--A Federal Receiver described in subparagraph (A)--

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant--

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section--

(1) the term ``knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity'' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term ``conducts'' includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term ``transaction'' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term ``financial transaction'' means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term ``monetary instruments'' means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term ``financial institution'' includes--

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term ``specified unlawful activity'' means--

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving--

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978)); \1\

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving--

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 95--RACKETEERING

Sec. 1957. Engaging in monetary transactions in property derived from specified unlawful activity

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are--

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury,

the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

(f) As used in this section--

(1) the term ``monetary transaction'' means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term ``criminally derived property'' means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the term ``specified unlawful activity'' has the meaning given that term in section 1956 of this title.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 96--RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec. 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 96--RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
Sec. 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 101--RECORDS AND REPORTS

Sec. 2071. Concealment, removal, or mutilation generally

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 101--RECORDS AND REPORTS

Sec. 2073. False entries and reports of moneys or securities

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of keeping accounts or records of any kind, with intent to deceive, mislead, injure, or defraud, makes in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties; or

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of receiving, holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, with like intent, makes a false report of such moneys or securities--

Shall be fined under this title or imprisoned not more than ten years, or both.

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 101--RECORDS AND REPORTS

Sec. 2075. Officer failing to make returns or reports

Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such Act or regulation, shall be fined under this title.

TITLE 11--BANKRUPTCY

CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III--THE ESTATE

Sec. 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date--

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include--

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that--

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;

(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds--

- (i) are not pledged or promised to any entity in connection with any extension of credit; and
- (ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$5,000;

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$5,000;

(7) any amount--

(A) withheld by an employer from the wages of employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where--

(A) the tangible personal property is in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b); or

(9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made--

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition.

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law--

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under

this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

TITLE 11--BANKRUPTCY

CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III--THE ESTATE

Sec. 546. Limitations on avoiding powers

(a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of--

(1) the later of--

(A) 2 years after the entry of the order for relief; or

(B) 1 year after the appointment or election of the first trustee under section 702, 1104, 1163, 1202, or 1302 of this title if such appointment or such election occurs before the expiration of the period specified in subparagraph (A); or

(2) the time the case is closed or dismissed.

(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that--

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(2) If--

(A) a law described in paragraph (1) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and

(B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.

(c)(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods--

(A) not later than 45 days after the date of receipt of such goods by the debtor; or

(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).

(d) In the case of a seller who is a producer of grain sold to a grain storage facility, owned or operated by the debtor, in the ordinary course of such seller's business (as such terms are defined in section 557 of this title) or in the case of a United States fisherman who has caught fish sold to a fish processing facility owned or operated by the debtor in the ordinary course of such fisherman's business, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common law right of such producer or fisherman to reclaim such grain or fish if the debtor has received such grain or fish while insolvent, but--

(1) such producer or fisherman may not reclaim any grain or fish unless such producer or fisherman demands, in writing, reclamation of such grain or fish before ten days after receipt thereof by the debtor; and

(2) the court may deny reclamation to such a producer or fisherman with a right of reclamation that has made such a demand only if the court secures such claim by a lien.

(e) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for

the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(f) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer made by or to (or for the benefit of) a repo participant or financial participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer, made by or to (or for the benefit of) a swap participant or financial participant, under or in connection with any swap agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

(i)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7-209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, or any successor to such section 7-209.

(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to (or for the benefit of) a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.

TITLE 11--BANKRUPTCY

CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III--THE ESTATE

Sec. 547. Preferences

(a) In this section--

(1) ``inventory'' means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or

livestock, held for sale or lease;

(2) ``new value'' means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) ``receivable'' means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(b) Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property--

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made--

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if--

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer--

(1) to the extent that such transfer was--

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was--

(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor--

(A) to the extent such security interest secures new value that was--

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

- (iii) given to enable the debtor to acquire such property; and
- (iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 30 days after the debtor receives possession of such property;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor--

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of--

(A) (i) with respect to a transfer to which subsection

(b)(4)(A) of this section applies, 90

days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection

(b)(4)(B) of this section applies, one year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest;

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;

(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600; or

(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,000.

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e)(1) For the purposes of this section--

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits

such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made--

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of--

(i) the commencement of the case; or

(ii) 30 days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and credit counseling agency.

(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

TITLE 11--BANKRUPTCY

CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III--THE ESTATE

Sec. 548. Fraudulent transfers and obligations

(a)(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily--

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which--

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(d)(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

(2) In this section--

(A) ``value'' means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of

such payment;

(C) a repo participant or financial participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment;

(D) a swap participant or financial participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer; and

(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.

(3) In this section, the term ``charitable contribution'' means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution--

(A) is made by a natural person; and

(B) consists of--

- (i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or
- (ii) cash.

(4) In this section, the term ``qualified religious or charitable entity or organization'' means--

(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.

(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if--

(A) such transfer was made to a self-settled trust or similar device;

(B) such transfer was by the debtor;

(C) the debtor is a beneficiary of such trust or similar device; and

(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that

such transfer was made, indebted.

(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by--

(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered

under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 781 and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).

TITLE 11--BANKRUPTCY
CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE
SUBCHAPTER III--THE ESTATE

Sec. 549. Postpetition transactions

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate--

- (1) that occurs after the commencement of the case; and
- (2) (A) that is authorized only under section 303(f) or 542(c) of this title; or
- (B) that is not authorized under this title or by the court.

(b) In an involuntary case, the trustee may not avoid under subsection (a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

(c) The trustee may not avoid under subsection (a) of this section a transfer of an interest in real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of an interest in such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such real property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to such interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

(d) An action or proceeding under this section may not be commenced after the earlier of--

- (1) two years after the date of the transfer sought to be avoided; or
- (2) the time the case is closed or dismissed.

TITLE 11--BANKRUPTCY
CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE
SUBCHAPTER III--THE ESTATE

Sec. 550. Liability of transferee of avoided transfer

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from--

- (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
- (2) any immediate or mediate transferee of such initial transferee.

(b) The trustee may not recover under section (a)(2) of this section from--

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(c) If a transfer made between 90 days and one year before the filing of the petition--

(1) is avoided under section 547(b) of this title; and

(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.

(d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.

(e)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of--

(A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(B) any increase in the value of such property as a result of such improvement, of the property transferred.

(2) In this subsection, ``improvement'' includes--

(A) physical additions or changes to the property transferred;

(B) repairs to such property;

(C) payment of any tax on such property;

(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and

(E) preservation of such property.

(f) An action or proceeding under this section may not be commenced after the earlier of--

(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or

(2) the time the case is closed or dismissed.

TITLE 11--BANKRUPTCY

CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III--THE ESTATE

Sec. 551. Automatic preservation of avoided transfer

Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.

TITLE 11--BANKRUPTCY

CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III--THE ESTATE

Sec. 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity

contracts, repurchase agreements, and master netting agreements

(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of--

- (1) the date of such rejection; or
- (2) the date or dates of such liquidation, termination, or acceleration.

(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages--

(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.

TITLE 11--BANKRUPTCY

CHAPTER 7--LIQUIDATION

SUBCHAPTER I--OFFICERS AND ADMINISTRATION

Sec. 704. Duties of trustee

(a) The trustee shall--

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated,

file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;

(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that--

(A) is in the vicinity of the health care business that is closing;

(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

(C) maintains a reasonable quality of care.

(b)(1) With respect to a debtor who is an individual in a case under this chapter--

(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than--

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall--

(A)(i) provide written notice to the holder of the claim

described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of--

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that--

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

TITLE 11--BANKRUPTCY

CHAPTER 7--LIQUIDATION

SUBCHAPTER II--COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE
Sec. 721. Authorization to operate business

The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

TITLE 11--BANKRUPTCY

CHAPTER 7--LIQUIDATION

SUBCHAPTER II--COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE
Sec. 727. Discharge

(a) The court shall grant the debtor a discharge, unless--

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred,

removed, destroyed, mutilated, or concealed--

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case--

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case--

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least--

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter;

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.); or

(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that--

(A) section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

(c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if--

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;

(3) the debtor committed an act specified in subsection (a)(6) of this section; or

(4) the debtor has failed to explain satisfactorily--

(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge--

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of--

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

APPENDIX

D

CASE LAW

Geo. P. Reintjes Co. , Inc. v. Riley Stoker Corp., 71 F. 3d 44, 48 (1st Cir. 1995) “Fraud on the Court” is construed narrowly. It is “reserved for those cases of injustices which, in certain instances are sufficiently gross to demand a departure from rigid adherence to the doctrine of res Judicata. “

Appling v. State Farm Mutual Auto Ins. Co., 340 F. 3d 769, 780 (9th Cir. 2003) (quoting United States v. Beggerly, 524 U.S. 38, 46 (1998)). The ninth Circuit has adopted the definition of “fraud upon the court” provided by Professor Moore: “ “Fraud upon the court” should , we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. “

Alexander v. Robertson , 882 F. 2d 421, 424 (9th Cir. 1989) (quoting 7 J. Moore & J. Lucas, Moore’s Federal Practice 60.33 92d ed. 1978)). It “ includes both attempts to subvert the integrity of the court and fraud by an officer of the court. “

In re Intermagnetics Am. , 926 F. 2d 912,916 (9th Cir. (1991). The moving party must “show an unconscionable plan or scheme which is designed to improperly influence the court in its decision.”

The eleventh Amendment does not protect state officials from claims for prospective relief when it is alleged that a state official acted in violation of federal law. Warnock v. Pecos County, 88 F. 3rd 341 (5th Cir 07-08-1996)

RCW 6.25.280, Chapter to be liberally construed –Amendments

Robin L. Miller Construction Co., Inc. v. Coltran 43P.3d 67 (Wash App Div. 1 04/01/2002) III Res Judicata “Because an attempt to execute a judgment lien is not a cause of action, we find that Res Judicata principals do not apply” V. Multiple Writs of Execution “Because RMC has not levied a successful execution to date, it is entitled to avail itself of the execution statute”. VI Laches “Therefore the doctrine of laches does not preclude RMC from executing upon its judgment”.

RCW 6.32.270 Adjudication of title to property –Jury Trial and RCW 4.64.020 (2).

“I feel as though the lawyers of this country are like passengers on the Titanic....the music is playing and the champagne glasses are tinkling, yetpractitioners in their momentary bliss are oblivious to the icebergs ahead.” Altman and Weil , national law firm consultants. “Our profession faces quantum change. I believe lawyers are like the great buffalo herds of the 1800’s, locked in stampedes for extinction. Is the cliff two years away or five?... I believe at

least six out of ten American lawyers will go over the cliff.” Charlie Robinson, futurist and attorney.

Beightol v. Kunowsky D.C. Pa. 1974 382 F. Supp. 98 (the Court held) “Absent highly unusual circumstances defenses of Executive Immunity and Good Faith by public officials in carrying out duties should be submitted to jury”

Connally vs. General Construction Co. 296 U.S. 385, 391 (1926) “[A] statute [or rule not in evidence], which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law”.

28 U.S.C. § 1861 : US Code - Section 1861: Declaration of

policy It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

CASES ON PRO SE RIGHTS

Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment, Trinset v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647

Federal Rules of Civil Procedure Rule 17, 28 “Next Friend” “A next friend is a person who represents someone who is unable to tend to his or her own interest.”

NAACP v. Button 371 US 415,) : United Mineworkers of America v. Gibbs, 383 US 715; and Johnson v. Avery 89 S. Ct. 747 (1969) Members of groups who are competent nonlawyers can assist other members of the group achieve the goals of the group in court without being charged with “unauthorised practice of law”.

U. S. Supreme Court Gideon v. Wainwright, 372 US 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963) “ Laymen cannot be expected to know how to

protect their rights when dealing with practiced and carefully counselled adversaries ,... and for them to associate together to help one another to preserve and enforce rights guaranteed them under federal laws cannot be condemned as a threat to legal ethics.

Howlett v. Rose, 496 U.S. 356 (1990) Federal law and Supreme Court Cases apply to State Court Cases.

Conley v. Gibson, 355 U.S. 41 at 48 (1957) “ Following the simple guide of rule 8(f) that all pleadings shall be construed as to do substantial justice”.... “The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principal that the purpose of pleading is to facilitate a proper decision on the merits.” The court also cited rule 8(f) FRCP, which holds that “ all pleadings shall be construed to do substantial justice.” Davis v. Welchler, 263 US 22 , 24 ; Stromberb v. California, 283 US 359; NAACP v. Alabama, 375 US 449 “The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice”.

Elmore v. McCammon (1986) 640 F. Supp. 905 “... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws.”

Haines v. Kerner , 404 US 519 (1972) “ Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient”.... “ which we hold to less stringent standards than formal pleadings drafted by lawyers.”

Platsky v. CIA, 953 F. 2d 25,26,28 (2nd Cir. 1991) Court errs if court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings.”

Jenkins v. McKeithen, 395 US 411, 421 (1959): “Pro se pleadings are to be considered without regard to technicality; pro se litigants’ pleadings are not to be held to same standards of perfection as lawyers.”

Marty v. Grasselli Chemical Co. 303 US 197 (1938) “ Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but

its importance consists in its effectiveness as a means to accomplish the end of a just judgment”.

Picking v. Pennsylvania Railway, 151 F. 2d 240, Third Cir. Court of Appeals “The plaintiffs civil rights pleading was 150 pages and described a federal judge as ‘inept’ Nevertheless, it was held ‘where a plaintiff pleads pro se suit for protection of civil rights , the Court should endeavour to construe Plaintiff’s Pleadings without regard to technicalities.”

Puckett v. Cox, 456 F. 2d. 233, (1972, 6th Cir. USCA) “It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in **Conley v. Gibson**

Roadway Express v. Pipe 447 US 752 at 757 (1982) “ Due to sloth, inattention or desire to seize tactical advantage, lawyers have long engaged in dilatory practices.... the glacial pace of much litigation breeds frustration with the Federal Courts and ultimately, disrespect for the law.”

“The Eleventh Amendment does not protect state officials from claims for prospective relief when it is alleged that state official acted in violation of Federal law. **Warnock v. Pecos County, 88 F. 3^d 341 (5th Cir. 07/08/1996, Edelman v. Jordan, 415 US 651, 664, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974) ; Brennan v. Stewart, 834 F. 2d. 1248, 1252 (5th Cir. 1988).**

Civil conspiracy exists when two or more combine to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. **Sound Mind and Body Inc. V. City of Seattle 122 Wn. 1074 (2004)**

“Due process requires that when government adjudicated or make binding determinations which directly affect legal rights of individuals, they use procedures which have traditionally been associated with the judicial process.” **Amos Treat and Co. V. Securities & Exchange Commission 306 F2d 260 (1962), 113 US App. D.C. 100.**

A “Hobsons Choice” occurs when a person is offered what is equivalent of no choice at all. Cited in part at (31) **State v. Chen 119 Wash. App. 1013 (Wash. App. Div. 2 11/13/2003)**

“The Fundamental requisite of due process of law is the opportunity to be heard”. The right to be heard has little reality or worth unless one is

informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. When notice is a person's due process which is a mere gesture is not due process. *Grannis v. Ordean* 234 U.S. 385, 394, 34 S. Ct. 779, 783, 58 L. Ed. 1363.

POINTS OF LAW

Which support and in turn are supported
by the Constitution of the United States of America.

1. "Where the meaning of the Constitution is clear and unambiguous, there can be no resort to construction to attribute to the founders a purpose or intent not manifest in its letter." *Norris v. Baltimore*, 172, MD 667; 192 A 531.0.

2. "It cannot be assumed that the framers of the Constitution and the people who adopted it, did not intend that which is the plain import of the language used. When the language of the Constitution is positive and free of all ambiguity, all courts are not at liberty, by a resort to the refinements of legal learning, to restrict its obvious meaning to avoid the hardships of particular cases. We must accept the Constitution as it reads when its language is unambiguous, for it is the mandate of the Sovereign power." *Cooke v. Iverson*, 122, N.W. 251.

3. "All laws which are repugnant to the Constitution are null and void." *Marbury v. Madison*, 5 US (2 Cranch) 137, 174, 176, (1803)

4. "The Constitution is superior to any ordinary act of the legislature; the Constitution and not such ordinary act, must govern the case to which they both apply." *Marbury v. Madison*, 5 US 137, 176 (U.S. Supreme Ct)

5. "The Bill of Rights was provided as a **BARRIER**, to protect, the individual against the arbitrary extractions of the majorities, executives, legislatures, courts, sheriffs, and prosecutors, and it is the primary distinction between democratic and totalitarian processes." *STANDLER - Supreme Court of Florida en banc*, 36 so 2d 443, 445(1948)

6. "Government may not prohibit or control the conduct of a person for reasons that infringe upon constitutionally guaranteed freedoms." *Smith v. U.S.* 502 F 2d 512 CA Tex(1974)

7. "It is a duty as much as a right for all citizens to jealously and zealously protect their Fourth Amendment rights." U.S. Supreme Court, appeal of *Chimel v. Calif.* 89 S Ct 2034

8. "Where rights secured by the Constitution are involved, there can be no rule in making or legislation which would abrogate them." *Miranda v. Arizona*, (U.S. Supreme Ct) 380 US 436(1966)

9. "There can be no sanction or penalty imposed upon one because of his exercise of Constitutional rights." *Sherar v. Cullen*, 481 F 2d 946(1973)

10. "We find it intolerable that one Constitutional right should have to be surrendered in order to assert another." *Simmons v. U. S.*, 390, US 389(1968)
11. "The claim and exercise of a Constitutional right cannot be converted to a crime." *Miller v. U. S.*, 230 F 486 at 489
12. "When Constitutional rights have been violated, remedies for violations are not dependant upon fictionalized distinctions." *Kelly v. U. S.*, 379 F Sup 532
13. Ed 1165: "In determining whether...rights were denied, we are governed by the substance of things and not by mere form;" *ID.*, *Louisville & N.R. Co. v. Schmidt*, 177 US 230, 20 Sup., Ct., 620 44 L Ed 747
14. "One need not be a criminal to claim Fifth Amendment (right), it applies to civil suits as well." *Isaacs v. U.S.*, 256 F 2d 654.
15. "Fifth Amendment (right) is available to outside of criminal court proceedings and serves to protect persons in all settings..." *Miranda v. Arizona*, (U.S. Supreme Ct.) 380 US 436(1966)
16. "Civil contempt's are sometimes civil in name only, entailing what are in reality criminal punishments." *Wyman v. Uphaus*, 360 US 72(1959)
17. "To penalize the failure to give a statement which is self incriminatory is beyond the power of Congress." *U.S. v. Lombarde*, 228 F. 980
18. "All acts of legislature...contrary to natural right and justice are void." *Robin v. Hardaway*, 1 Jefferson 109(1772)
19. "law of the land...renders judgment only after trial." *Dartmouth College v. Woodward* 4 Wheat, US 518, 4 Ed 629(1814)
20. "due course of law...is synonymous with 'due process of law' or 'law of the land'"... *Kansas Pac. Ry. Co. v. Dunmeyer*, 19 Kan 542 (See also *Davidson v. New Orelans*, 96 US 97, 24, L Ed 616).
21. "Lack of counsel of choice can be conceivably even worse than no counsel at all, or of having to accept counsel beholden to one's adversary." *Burgett v. Texas*, 389 US 109
22. "A state or federal court which arbitrarily refuses to hear a party by counsel...civil or criminal, denies the party a hearing, and therefore denies him due process of law in a Constitutional sense." *Reynolds, v. Cochran*, 365 US 525, 51 Ed @d 754, 81 S Ct 723 in Am Jur P.979
23. "A plaintiff need not pursue his state remedies before instituting a 1983 action." *Monroe v. Pape(or perhaps Pope)*, 365 US 167(1961)

24. "To maintain an action under (42 USC) 1983, it is not necessary to allege or prove that the defendants intended to deprive Plaintiff of his Constitutional rights or that they acted willfully, purposely, or in furtherance of a conspiracy... it is sufficient to establish that the deprivation... was the natural consequences of Defendants acting under the color of law..." *Ethridge v Rhodos*, DC Ohio 268 F Sup 83(1967), *Whirl v. Kern*, CA 5 Texas 407 F 2d 781 (1968) *Ury v. Santee*, DC Ill,(1969)

25. "In a 42-1983 action, the allegations of the Complaint and the inferences to be drawn therefrom, upon a motion to dismiss, must be taken most favorably to the Plaintiff." *Nanez v. Ritger*, DC Wis. 304 F Sup 354(1969)

26. "When any court violates the clean and unambiguous language of the Constitution, a fraud is perpetrated and no one is bound to obey it." *State v. Sutton*, 63 Minn. 147 65 NW 262 30 LRA 630 AM ST 459

27. "Disobedience or evasion of a Constitutional mandate may not be tolerated, even though such disobedience may...promote in some respects the best interests of the public." *Slote v. Bd. of Examiners*, 274 N.Y. 367; 2 NE 2d 12; 112 ALR 660. (See also *Watson v. Memphis*, 375 US 526; 10 L Ed 529; 83 S Ct 1314.)

28. "It is the duty of the courts to be watchful for the CONSTITUTIONAL RIGHTS of the citizen, against any stealthy encroachments thereon." *Boyd v. U.S.*, 116 US 616, 635, (1885)

29. "The judicial branch has only one duty - to lay the Article of the Constitution which is involved beside the statute which is challenged and to decide whether the latter squares with the former...the only power it (the Court) has...is the power of judgement." *U.S. v. Butler*, 297 US(1936)

30. "A claim under the civil rights act expressly gives the District Court Jurisdiction, no matter how imperfectly the claim is stated." *Harmon v. Superior Ct of the State of California*, 307 F 2d 796, CA 9(1962)

31. "A court is without power to render a judgement it lacks jurisdiction of the parties or of the subject matter...In such cases, the judgement is void, has no authority and may be impeached." *O'Leary v. Waterbury Title Co.*, 117 Conn 39, 43, 166 A. 673

32. "Courts, (must) indulge every reasonable presumption against waiver of fundamental constitutional rights, and...not presume acquiescence in the loss of fundamental rights." *Dimmock v. Scalded*, 293 US 474(1935) 304 US at 464

33. "A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may prove to be and inartistically as the complaint may be drawn. This is particularly true where the Plaintiff is not represented by counsel." *Brooks v. Pennsylvania R. Co.*, 91 F Sup 101 DC SD NY(1950)

34. "a motion to dismiss is not to be granted unless it appears beyond doubt that the plaintiff can

prove no set of acts which would entitle him to relief." *Haines v. Keener*, 404 US 519, 30 L Ed 2d 652, 92 S CT 594(1972)

35. "Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen." *Olmstead v. U.S.*, 277 US 438 485; 48 S CT L ED 944(1928)

36. "Judges may be punished criminally for willful deprivation of...rights on the strength of 18 usc 242." *Imbler v. Pachtman*, US 47 L Ed 2d 128, 96 S Ct

37. "Judges have no immunity from prosecution for their judicial acts." *Bradley v. Fisher*, US 13 Wall 335(1871)

38. "Government immunity violates the common law maxim that everyone shall have remedy for an injury done to his person or property." *Fireman's Ins. Co. of Newark, N.J. v. Washburn County*, 2 Wis 2d 214, 85 N.W. 2d 840(1957)

39. "Immunity fosters neglect and breeds irresponsibility, while liability promotes care and caution, which caution and care is owed by the government to its people." *Rabon v. Rowen Memorial Hosp., Inc.*, 269 NS 1, 13, 152 SE 1d 485, 493(1967)

40. "Actions by state officers and employees, even if unauthorized or in excess of authority, can be actions under 'color of law'." *Stringer v. Dilger*, CA 10 Colo 313 F 2d 536(1963)

41. "A judge is not immune from criminal sanctions under the civil rights act." *Ex Parte Virginia*, 100 US 339(1879), (54 US v. Moylon 417 F 2d 1002, 1006(1969))

42. "the language and purpose of the civil rights acts, are inconsistent with the application of common law notions of official immunity..." *Jacobsen v. Henne*, CA 2 NY 335 F 2d 129, 133 (1966). (See also *Anderson v. Nossner*, CA 5 Miss 428 F 2d 183 (1971))

43. "Governmental immunity is not a defense under (42 USC 1983) making liable every person who under color of state law deprives another person of his civil rights." *Westberry v. Fisher*, DC Me. 309 F Sup 95(1970)

44. "Judicial immunity is no defense to a judge acting in the clear absence of jurisdiction." *Bradley v. Fisher*, US 13 Wall 335 (1871)

45. "When the responsibilities of lawmaker, prosecutor, judge, jury and disciplinarian are thrust upon a judge he is obviously incapable of holding the scales of justice perfectly fair and true." *Fisher v. Pace*, 336 US 155 at 167

46. "the jury...acts not only as a safeguard against judicial excesses, but also as a barrier to legislative and executive oppression. The Supreme Court...recognizes that the jury...is designed to protect Defendants against oppressive governmental practices." *United States ex rel Toth v. Quarles*, 350 US 11, 16 (1955)

One aspect of the problem of delineating the respective provinces of judge and jury divided the Justices for a lengthy period but now appears quiescent—cases arising under the Federal Employers' Liability Act. The argument was frequently couched by the majority in terms of protecting the function of the jury from usurpation by judges intent on subverting and limiting remedial legislation enacted by Congress, 72 and by the minority in terms of the costs to the Supreme Court in time and effort spent in evaluating the quantum of evidence necessary to create a jury question. 73

Although the considerations present in the FELA cases were not inherently different from those in any civil case where the direction of a verdict or a decision of an issue by the court may raise *sub silentio* the issue whether the Seventh Amendment right to a jury trial has been impaired by court usurpation of the jury function, cases under the FELA, which retained the common-law requirements of negligence as a prerequisite to recovery, involved peculiarly difficult decisions as to the adequacy of proof of negligence.

"Special and important reasons for the grant of certiorari in these cases are certainly present," the Court wrote in a leading case, "when lower federal and state courts persistently deprive litigants of their right to a jury determination." 74 The operating test was: "Under this statute the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought. It does not matter that, from the evidence, the jury may also with reason, on ground of probability, attribute the result to other causes, including the employee's contributory negligence. Judicial appraisal of the proofs to determine whether a jury question is presented is narrowly limited to the single inquiry whether, with reason, the conclusion may be drawn that negligence of the employer played any part at all in the injury or death." Similar issues have arisen under such statutes as the Jones Act 75 and the Safety Appliance Act. 76

"Judges are to fix their sights primarily to make that appraisal and, if that test is met, are bound to find that a case for the jury is made out whether or not the evidence allows the jury a choice of other probabilities." 77 A persistent dissent in the line of cases expressed the fear that in FELA cases "anything that a jury says goes, with the consequences that all meaningful judicial supervision

over jury verdicts in such cases has been put at an end. . . If so, . . . the time has come when the Court should frankly say so. If not, then the Court should at least give expression to the standards by which the lower courts are to be guided in these cases." 78

70 319 U.S. 372, 397. The case, being a claim against the United States, need not have been tried by a jury except for the allowance of Congress.

71 See, e.g., *Neely v. Martin K. Eby Construction Co., Inc.*, 386 U.S. 317 (1967), interpreting Rules 50(b), 50(c)(2) and 50(d) of the Federal Rules of Civil Procedure, as well as the Seventh Amendment.

72 E.g., *Tiller v. Atlantic Coast Line R.R.*, 318 U.S. 54 (1943), in which Justice Black's opinion of the Court initiated the line of cases here considered; *Bailey v. Central Vermont Ry.*, 319 U.S. 350 (1943); *Tennant v. Peoria & Pekin Union Ry.*, 321 U.S. 29 (1944). See *Rogers v. Missouri Pacific R.R.*, 352 U.S. 500, 507–510 (1957). Trial by jury is "part and parcel of the remedy afforded railroad workers" under the FELA. *Bailey v. Central Vermont Ry.*, 319 U.S. at 354. "The difference between the majority and minority of the Court in our treatment of FELA cases concerns the degree of vigilance we should exercise in safeguarding the jury trial—guaranteed by the Seventh Amendment." *Harris v. Pennsylvania R.R.*, 361 U.S. 15, 17 (1959) (Justice Douglas concurring). "[T]his Court is vigilant to exercise its power of review . . . to correct instances of improper administration of the Act and to prevent its erosion by narrow and niggardly construction." *Rogers v. Missouri Pacific R.R.*, 352 U.S. at 509.

73 *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521, 524 (1957) (Justice Frankfurter dissenting), contains a lengthy review and critique of the Court's practice.

74 *Rogers v. Missouri Pacific R.R.*, 352 U.S. 500, 510 (1957).

75 *Schulz v. Pennsylvania R.R.*, 350 U.S. 523 (1956); *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521 (1957); *Michalic v. Cleveland Tankers*, 364 U.S. 325 (1960). See also *Senko v. La Crosse Dredging Corp.*, 352 U.S. 370 (1957); *A. & G. Stevedores v. Ellerman Lines*, 369 U.S. 355 (1962).

76 *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521, 525 n.2 (1957) (Justice Frankfurter dissenting).

77 *Rogers v. Missouri Pacific R.R.*, 352 U.S. at 507. The cases are collected *id.* at 510 n.26. The cases are tabulated and categorized in *Wilkerson v. McCarthy*, 336 U.S. 53, 68–73 (1949) (Justice Douglas concurring), and *Harris v. Pennsylvania R.R.*, 361 U.S. 15, 16–25 (1959). See also *Harrison v. Missouri Pac. R.R.*, 372 U.S. 248 (1963); *Basham v. Pennsylvania R.R.*, 372 U.S. 699 (1963).

78 *Harris v. Pennsylvania R.R.*, 361 U.S. 15, 27–28 (1959) (Justice Harlan dissenting). See also *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521, 524 (1957) (Justice Frankfurter dissenting); *Dick v. New York Life Ins. Co.*, 359 U.S. 437, 447 (1959) (Justice Frankfurter dissenting).